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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 236.

THOMAS O'CONOR, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TEXAS.

FILED APRIL 20, 1905.

(19,721.)

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INDEX.

	Original.	Print
Caption	*a*	1
Transcript from district court for county of Travis	1	1
Caption	1	1
Plaintiff's original petition	1	1
Defendant's petition for removal to United States circuit court	3	2
Bond for removal	5	3
Plaintiff's answer to motion to remove	7	5
Order refusing petition to remove	8	5
Defendant's first amended answer	9	6
Judgment and notice of appeal	18	11
Statement of facts	20	12
Plaintiff's evidence	20	12
Part of deposition of Thomas O'Conor	20	12
Deposition of Walter Pierce	20	12
Part of Exhibit No. 1 to depositions of Walter Pierce; minutes of court, &c	21	13
Defendant's evidence	27	18
Deposition of Thomas O'Conor	27	18
Deposition of Dario Sanchez	29	19
Plat referred to in deposition	31	20
Certified translated copy from General Land Office of power of attorney from Joaquin Galan to Jose Galan	32	21

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 24, 1906.

	Original.	Print.
Certified translated copy from General Land Office of deed from Juan Jose Galan to Manuel Garza	32	21
Deed from Jesus Gutierrez *et al.* by attorney-in-fact, Joaquin Garza, to Daniel Ruggles	33	21
Deed from Joaquin Garza, administrator of estate of Manuel Garza, deceased, to Daniel Ruggles	33	22
Deed from Daniel Ruggles and wife to Jeremiah J. West	31	22
Certified copy of last will and testament of Jeremiah J. West appointing John M. Gordon executor	34	22
Certified copy of deed from John M. Gordon, executor, to A. E. and H. Spohn and Alexander Hamilton	34	22
Deed from A. E. & H. Spohn and Alexander Hamilton to Thomas O'Conor and A. de la Garza	35	23
Deed from J. V. Spohn to Thomas O'Conor and A. de la Garza	35	23
Certified copy of judgment of partition rendered by district court of Webb county in cause No. 891, Arthur E. Spohn *et al. vs.* Thos. O'Conor *et al.*	36	23
Part of Exhibit No. 1 to depositions of Walter Pierce, not introduced by plaintiff	36	23
Certified copy of minutes of supreme court of Texas in cause No. 1762, The State of Texas *vs.* Daniel Ruggles, error from Webb county	42	28
Field-notes of tract of land originally granted by Spanish government to Joaquin Galan, 1767	44	29
Certified copy of patent from the State of Texas to Joaquin Galan, his heirs and assigns	46	31
Certified copy of patent from the State of Texas to heirs of Joaquin Galan, deceased, their heirs or assigns	48	32
Certified copy of judgment of district court of Webb county, rendered January 8, 1862, in case of Daniel Ruggles *vs.* The State of Texas	49	33
Certified copy of judgment of district court of Webb county, rendered March 17, 1872, in consolidated cases Nos. 11 and 14, of Daniel Ruggles *vs.* The State of Texas	49	33
Act of legislature of the State of Texas approved April 4, 1881	50	33
Agreement as to statement of facts	51	34
Judge's certificate to statement of facts	51	34
Bill of exceptions No. 1	52	34
Deed of Murphy *et al.* to Spohn *et al.*, January 28, 1881	52	34
Judge's certificate	56	37
Bill of exceptions No. 2	56	37
Deed of Murphy *et al.* to Spohn, November 8, 1881	56	37
Judge's certificate	60	40
Assignments of error	61	40
Appeal bond	65	43
Bill of costs	67	44
Clerk's certificate	69	45
Proceedings in court of civil appeals	72	46
Opinion	72	46
Judgment	85	54

	Original.	Print.
Motion for rehearing	85	54
Order overruling motion for rehearing	89	56
Proceedings in supreme court of State of Texas	89	57
Petition for writ of error	89	57
Order granting application for writ of error	103	65
Citation and service	103	66
Order of submission	105	67
Opinion	105	67
Judgment	110	71
Motion for rehearing	111	71
Opinion on motion for rehearing	123½	80
Order overruling motion for rehearing	125	81
Petition for allowance of writ of error	126	81
Order allowing writ of error	133	86
Writ of error (original)	134	86
Citation in error (original)	136	87
Bond on writ of error	137	88
Assignment of errors	138	89
Certificate of clerk of supreme court of Texas to transcript	143	92

a

No. 17138.

THE STATE OF TEXAS
vs.
THOMAS O'CONNOR.

1 *Caption.*

THE STATE OF TEXAS, *County of Travis.*

At a term of the District Court of the 26th Judicial District of Texas, begun and holden at Austin, within and for the County of Travis, before the Honorable R. L. Penn, and ending on the 28th day of June, A. D. 1902, the following case came on for trial, to-wit:

No. 17138.

THE STATE OF TEXAS
vs.
THOMAS O'CONNOR.

Plaintiff's Original Petition.

Filed July 5th, 1901.

In the District Court of Travis County, Texas, Fall Term, A. D. 1901.

THE STATE OF TEXAS, *County of Travis.*

To the Honorable Judge of said court:

The State of Texas, plaintiff herein, through and by C. K. Bell, Attorney General of said State, brings this suit and complaining of Thomas O'Connor, defendant herein, who is to be found in Webb County, State of Texas, respectfully represents:

2 That on the 1st day of January, A. D. 1895, The State of Texas, plaintiff herein, then was and still is the owner in fee simple (the same belonging to the Common Free School Fund of the State of Texas) of a certain tract of land situated in the County of Webb in the State of Texas about 37 miles North 37° West from the town of Laredo, and which said land is more particularly described as follows, to-wit:

Beginning at a pile of rock on the East bank of the Rio Grande river at the mouth of San Pedro creek, an old corner:

Thence North 47° East 15088 varas to a corner;

Thence North 70° East 4152 varas to a corner;

Thence South 20° East 7359 varas;

Thence South 70° West 18420 varas, a corner on the North bank of the Rio Grande river;

Thence up said river with its meanderings to the place of beginning, containing 19,410-13/160 acres.

That plaintiff was in the possession of said land and is now entitled to the possession thereof; that on the said 1st day of January, A. D. 1895, the defendant, without authority of law entered upon the said lands and dispossessed the plaintiff of the same, and held, occupied and claimed the same adversely to plaintiff and is still so doing, to plaintiff's damage in the sum of Ten Thousand Dollars.

That the rental value of said land is five cents per acre per annum.

Premises considered, the State of Texas, plaintiff herein, prays that the defendant be cited to answer hereto as required by law; that on final hearing hereof, the State of Texas, have judgment against said defendant for the recovery of the title to and possession of said land, with writ of possession for the same, and for damages, and for
3 the rental value of the use and occupation of said land, together with ten per cent thereon as attorney's fees, and for costs, and for all other and further relief that she may be entitled to both in law and in equity.

C. K. BELL,
Attorney General, Attorney for The State of Texas.

(Endorsed:) No. 17,138. The State of Texas *vs.* Thomas O'Connor. Plaintiff's Original Petition. This suit is brought as well to try title as for damages. Filed in the District Court of Travis Co., 26th Jud. Dist. July 5th, 1901. Jas. P. Hart, Clerk.

Defendant's Petition for Removal to U. S. Circuit Court.

Filed Oct. 5th, 1901.

No. 17138.

In the District Court of Travis County, State of Texas.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

To the Honorable Judge of said Court:

The petition of Thomas O'Conor, the defendant in the above entitled cause, shows to the Court as follows:

That said suit was begun against your petitioner in said Court by the filing of a petition in trespass to try title and for damages on the 5th day of July, 1901, and by the service upon petitioner of a written notice and certified copy of said petition as provided by statute in cases of non-resident defendants; that your petitioner has not filed his answer in said cause, but that, as to your petitioner, said cause is now pending; that said cause has not been tried and that this is the first term of said District Court at which the same could by any probability be tried; that the plaintiff in said cause is
4 the State of Texas and the defendant therein is your petitioner; that at the time the said cause was begun your

petitioner, the sole defendant therein, was and he is now, an alien and a subject of the United Kingdom of Great Brittain and Ireland and a resident of the City of Nuevo Laredo in the State of Tamaulipas in the Republic of Mexico; that the matters in dispute in said suit and for which said suit is brought, exceeds the sum of two thousand dollars exclusive of costs.

Your petitioner herewith presents a good and sufficient bond as provided by the statute in such cases, that he will on or before the first day of the ensuing session of the United States Circuit Court for the Austin Division of the Western District of the State of Texas, file therein a transcript of the record of this action and for the payment of all costs which may be awarded by the said court, if the said Circuit Court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays that this Court proceed no further herein, except to make the order of removal as required by law and to accept the bond as presented herewith, and direct a transcript of the record herein to be made for said Court as provided by law, and as in duty bound your petitioner will ever pray.

THOS. O'CONOR.

THE STATE OF TEXAS, *County of Webb.*

Thomas O'Conor being duly sworn according to law deposes and says: I am the petitioner in the above written petition and have read said petition, and the same is true of my own knowledge, except such matters as are therein stated on information and belief and as to such statement I believe it to be true.

THOS. O'CONOR.

Subscribed and sworn to before me this 4th day of October, 1901.

[SEAL.]

P. J. MACMAHON,
Not. Pub., Webb Co., Texas.

(Endorsed:) No. 17,138. The State of Texas *vs.* Thomas O'Conor Petition of Defendant for Removal of Cause to the United States Circuit Court. Filed Oct. 5th, 1901. Jas. P. Hart, Clerk. By D. J. Pickle, Deputy.

Bond for Removal.

No. 17138.

In the District Court of Travis County, State of Texas.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

Know all men by these presents that we, Thomas O'Conor, as principal, a resident of the City of Nuevo Laredo, in the State of

Tamaulipas in the Republic of Mexico, and P. J. Macmahon and H. Deutz as sureties, residents of Webb County in the State of Texas, are held and firmly bound unto the State of Texas, the plaintiff in the above entitled cause in the sum of five hundred dollars ($500.), lawful money of the United States of America, for the payment of which well and truly to be made we and each of us bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

The conditions of this obligation are such that, whereas, the said Thomas O'Conor has applied by petition to the District Court
6 of the State of Texas in and for the County of Travis, for the removal of a certain cause therein pending, wherein The State of Texas is plaintiff and the said Thomas O'Conor is defendant, to the Circuit Court of the United States for the Western District of Texas, the Austin Division, for further proceedings on grounds in said petition set forth, and that all further proceedings in said action in said District Court be stayed.

Now, therefore, if the said Thomas O'Conor shall enter in said Circuit Court of the United States for the Western District of Texas, Austin Division, on or before the first day of the next regular session, a copy of the records in said suit and shall pay or cause to be paid all costs that may be awarded therein by said Circuit Court of the United States if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise shall remain in full force and effect.

Witness our hands this 4th day of October, 1901.

THOS. O'CONOR, *Principal.*
H. DEUTZ, *Surety.*
P. J. MACMAHON, *Surety.*

THE STATE OF TEXAS, *Webb County.*

P. J. Macmahon and H. Deutz, the sureties named in the foregoing bond being first duly sworn, each for himself, deposes and says as follows: I am the same person whose name is subscribed to the foregoing bond, and I state I am a householder and resident of the County of Webb and State aforesaid, and that I am worth the sum of five hundred dollars ($500.) named therein as the penalty
7 thereof, over and above all my just debts and liabilities, exclusive of property, which is exempt from execution.

H. DEUTZ.
P. J. MACMAHON.

Subscribed and sworn to before me this 4th day of Oct., 1901.
[SEAL.]
GEO. R. PAGE,
Clerk County Court, Webb County, Texas.

(Endorsed:) No. 17,138. The State of Texas *vs.* Thomas O'Conor. Bond for Removal of Cause.

Plaintiff's Answer to Motion to Remove.

Filed Oct. 8th, 1901.

No. 17138.

In the District Court of Travis County, Texas, 26th Judicial District.

THE STATE OF TEXAS
vs.
THOMAS O'CONNOR.

Now comes the plaintiff herein and excepts to the motion filed by the defendant to transfer this cause to the United States Circuit Court and says that the petition filed for that purpose is wholly insufficient and does not justify or require this Honorable Court in making an order transferring the case, because it appears from said motion and from the papers in the original case that the State of Texas is the plaintiff, and the law does not authorize the transferring of a case in which a sovereign State is plaintiff to a United
8 States court, said State not being a citizen of any other State, and therefore the diverse citizenship required by law to justify the transfer of a case does not and cannot exist.

Wherefore plaintiff moves that the said application be not granted, and that this cause be not transferred to the United States Court.

C. K. BELL,
Attorney General, Counsel for Plaintiff.

(Endorsed:) No. 17,138. The State of Texas *vs.* Thomas O'Connor. Plaintiff's Answer to Defendant's Motion to Transfer. Filed Oct. 8, 1901. Jas. P. Hart, Clerk.

Order Refusing Petition to Remove.

October 9th, 1902.

17138.

STATE OF TEXAS
vs.
THOMAS O'CONNOR.

And now on this the 8th day of October, 1901, came the parties by their respective attorneys when came on to be heard the defendant's petition and bond for removal of this cause to the Circuit Court of the United States for the Western District of Texas, and after hearing evidence and argument on the said petition for removal and continuing same until this the 9th day of October, 1901, upon further hearing the Court is of the opinion and so orders that the

9 application and petition for the removal of this cause be and the same is refused, to which action of the Court the defendant excepts.

And now on this the 15th day of October, 1901, it is ordered by the Court that by agreement of the parties this cause is continued.

Defendant's First Amended Answer.

Filed May 5th, 1902.

No. 17138.

In the District Court of Travis County, State of Texas.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

Now comes the defendant Thomas O'Conor by his attorney, the permission of the court having been first had and obtained, and amends his original answer filed herein on the 12th day of October, 1901, and for amendment says: That this is a suit in trespass to try title and for damages; that the land in controversy is situated in Webb County in the State of Texas and not in Travis County in said State, as fully appears from plaintiff's original petition filed herein, wherefore, defendant says that this court has no jurisdiction of the subject matter of this suit, and prays judgment whether this court can or will take further congnizance of the same.

H. G. DICKINSON,
Attorney for Defendant.

And now comes this defendant by his attorney, without in any manner waiving his above and foregoing plea to the jurisdiction of this court, but relying upon the same, and excepts to plaintiff's
10 original petition filed herein and says that the same is insufficient in law because:

First. It shows no cause of action against defendant.

Second. It fails to show or allege by what authority the Attorney General of the State of Texas brings this suit.

Third. It fails to show or allege that the land described therein is inclosed or fenced or has been inclosed or fenced by defendant, wherefore defendant prays judgment of the sufficiency of the said petition and that he be dismissed with his costs.

H. G. DICKINSON,
Attorney for Defendant.

And further answering herein without in any manner waiving his above and foregoing plea and exceptions, but relying upon the same, the defendant by his attorney says:

First. That he denies all and singular the allegations contained in plaintiff's original petition filed herein.

Second. That he is not guilty of the supposed wrongs, injuries and trespasses or any of them as charged against him in said petition and of this he puts himself upon the country.

Wherefore, he prays judgment and that he be dismissed with his costs.

H. G. DICKINSON,
Attorney for Defendant.

And further answering herein, without waiving in any manner his above and foregoing pleas and exceptions, defendant by his attorney says:

1st.

That defendant claims title to the land described in plaintiff's petition under and by virtue of a grant of land from the government of Spain to Joaquin Galan duly made in the year A. D.
11 1767 or about that time and prior to the year A. D. 1804.

That the said grant of land to the said Joaquin Galan was recognized and confirmed by a judgment of the district court of Webb County, State of Texas, duly given and made on the 13th day of March, 1872, in a suit for confirmation of title, the same being a consolidation of two other suits for confirmation of title, Nos. 11 and 14 on the civil docket of said court, wherein Daniel Ruggles was plaintiff and The State of Texas was defendant, instituted and prosecuted under and by virtue of an act of the Legislature of The State of Texas, approved the 11th day of February, 1860, entitled, "An Act to ascertain and adjudicate certain legal claims for land against the State, situated between the Nueces and Rio Grande rivers." That by said judgment the land embraced in said grant was ascertained and found to be within Webb County, and its territorial limits and boundaries were ascertained, described and decreed to be as follows, to-wit: "Beginning at the lower or south west corner of the grant at a stone mound at El Rincon de Galan; Thence N. 60° E. 6700 varas to the top of a hill through a ticket, at 22870 varas a water hole, at 26370 varas the Arroyo de Santa Isabel; at 27060 varas Eagle Pass road, at 48350 varas round hill called Cerrito Prieto, south east ancient corner; Thence N. 47° 30′ W. 28010 varas to El Almud, another ancient land mark; Thence N. 0° 45′ E. 16850 varas to Los Piloncillos, a round hill; the northeast ancient corner; Thence S. 53° 30′ W. 44840 varas to Los Dos Hermanos, also an ancient land mark; Thence S. 12° 30′ W. 26006 varas to the mouth of the Arroyo de la Espada, where it empties into the Rio Grande, being another land mark and the northwest corner of this grant; Thence down the Rio Grande with its meanders including all the land on the Texas side
within the above described metes and bounds to the point of
12 beginning at El Rincon de Galan, containing about sixty three leagues of land and 5,205,286 square varas of land."

That by said judgment the title to the land described therein was duly confirmed to the said Joaquin Galan, his heirs and legal assigns, and by its express terms said title was vested in the said Daniel Ruggles, the plaintiff in said cause, as the legal holder and

owner of the title of the said Joaquin Galan and his heirs. That the suits in which said judgment was rendered were brought within three years of the passage of said act of the Legislature approved the 11th day of February, 1860 and in compliance with its terms, but were not finally adjudicated until after such three years had expired, owing to the civil war then existing and to the suspension, interruption and irregularity of the terms of the District Court of said Webb County at that time. That said judgment duly given and made as aforesaid and the title to said land adjudicated and confirmed by it, were thereafter recognized, ratified, confirmed and in all things validated by the plaintiff in this case, The State of Texas, by an act of the Legislature of the State of Texas, approved April 4th, 1881, and entitled "An Act to authorize and require the issue of patents to lands situated between the Rio Grande and Nueces rivers, the titles to which have been confirmed under the Act of February 11th, 1860. That in conformity with said last aforesaid act of the Legislature of Texas and in further recognition and ratification of said judgment and of the title therein adjudicated and confirmed, The State of Texas, on the 8th day of July, 1887, caused a certain patent, No. 514, Volume 24, to be issued by L. S. Ross, Governor, and R. M. Hall, Commissioner of the General Land Office, of the State of Texas, granting to the said Joaquin Galan, his heirs and legal assigns and their heirs and assigns, 31½ leagues of land, all contained
13 within the limits of the land described in said judgment, and thereafter on the 4th day of October, 1898, caused another patent, No. 370 volume 25, to be issued by C. A. Culberson, Governor, and Andrew J. Baker, Commissioner of the General Land Office, of the State of Texas, granting to the heirs of the said Joaquin Galan, their heirs and assigns, 66,955 acres of land situated in said Webb County; all also embraced within the limits of the land described in said judgment.

That upon the trial of said suit in which said judgment was rendered The State of Texas was duly represented by its duly authorized District Attorney. That all the land described in plaintiff's petition is a part and parcel of the land embraced within the limits of the land described and defined in said judgment. That defendant gave and paid a large, good and valuable consideration for the same, to-wit: the sum of $8,000., without knowledge or notice of any claim thereto by plaintiff. That defendant claims and deraigns title to the same from said Joaquin Galan through the said Daniel Ruggles by valid mesne conveyances. That defendant and those under whom he claims have been in possession of the same for the period of more than ninety-six years next before the commencement of this suit. That the defendant has been in the exclusive, peaceable and adverse possession of the same for the period of twenty years next before the commencement of this suit, cultivating, using and enjoying the same, paying all taxes assessed against the same, aggregating a large sum, to-wit: $4500. and claiming the same under deeds duly registered.

That said judgment is a valid and subsisting judgment and remains in full force and effect, not reversed or otherwise vacated.

That by the due making and rendition of said judgment; by the appearance of the State of Texas in the trial of said suit
14 in which said judgment was rendered by its regularly authorized District Attorney and as a party thereto; by the passage and enactment of the said Act of the Legislature of the State of Texas approved April 4th, 1881; by the issuance of the two patents aforesaid; by the long acquiescence of The State of Texas in the defendant's notorious and adverse possession of the land described in plaintiff's petition without any action on the part of plaintiff to vacate or nullify said judgment or to dispossess defendant; by the payment by this defendant of the said large, good and valuable consideration for said land without knowledge or notice of any claim thereto by plaintiff; by the acceptance from defendant by plaintiff of all taxes assessed against said land for a period of twenty years, aggregating the large sum aforesaid; the plaintiff, the State of Texas, is bound and concluded by said judgment and is, and of right ought to be, estopped and forever barred from impeaching or denying its validity and is further estopped and forever barred from impeaching or denying the right and title of the defendant to the land described in plaintiff's petition; and defendant says that if plaintiff ever had any legal or equitable claim to said land, the same is now and was at the commencement of this suit a stale demand, the enforcement of which by this action is barred both in law and equity.

2d.

Claiming to be the owner of the land described in plaintiff's petition under and by virtue of the said grant of the Government of Spain to Joaquin Galan as aforesaid, defendant further says that if said judgment for any reason should be held invalid and void, then defendant says that said grant was recognized and confirmed by another judgment of the District Court of Webb County, State of Texas, duly made and given by said court on the 8th day
15 of January, 1862, in a suit for confirmation of title, wherein Daniel Ruggles was plaintiff and The State of Texas was defendant instituted and prosecuted under and by virtue of the said act of the Legislature of the State of Texas approved the 11th day of February, 1860. That by said judgment last aforesaid it was considered, adjudged and decreed by the court, "that some time previous to the year 1804 the Government of Spain granted to Joaquin Galan a certain large tract of land situated on the east bank of the Rio Grande in the territory now included in Webb County, about forty miles above the town of Laredo, embraced within the following boundaries, to-wit: Beginning at a well known place called the Rincon de Galan or the Angostura on the eastern bank of the Rio Grande, said point being a small distance below the ancient town of Palafox, running thence in a straight line north-easterly to a well known point called the Cerrito Prieto being a solitary eminence; thence in a westerly direction to another well known point called Almudes, this being also a solitary eminence, thence in a southerly direction to the bank of the Rio Grande in a straight line to a noted

point called Arroyo de San Pedro where the same empties into the Rio Grande in the centre of the same; thence down said river to the starting point, these said noted points forming all the ancient land marks and boundaries to said tract." That by said judgment last aforesaid it was further considered, adjudged and decreed by the court, "that in the year 1805, the said Joaquin Galan sold the said tract of land to one Manuel Garza, who settled upon the same and occupied it for many years and that about the year 1810, the Government of Spain being desirous of forming a town on the river bank, where the said Manuel Garza had planted his ranch, the said Government did then and there condemn and take from the said Manuel Garza for the use of the Government all that part of
16 his said tract of land lying and fronting on the Rio Grande to the depth of Six Mexican leagues and did then and there lay out and establish the town of Palafox on the eastern bank of the Rio Grande with its exidos extending across the same and gave and donated the lands above and below the said town to the settlers of the same in the form or shape of porciones running back from the river Six Mexican leagues for depth." That by said judgment last aforesaid the title to all the land embraced within the boundaries therein described was decreed and vested in the said Joaquin Galan, his heirs and assigns, except that portion of the same, expropriated by the Government of Spain, the title to which, the court, by said judgment, found, considered and decree- to be vested in the said inhabitants of the town of Palafox in the shape of porciones lying above and below said town.

That said judgment last aforesaid is a valid and subsisting judgment, not reversed or vacated, and the plaintiff, the State of Texas, as a party thereto, is concluded and bound thereby, and is estopped and forever barred from denying or impeaching its validity or the validity of the title, adjudicated and confirmed thereby; and is further estopped and forever barred from denying the fact that the title to all the land described therein, except that portion confirmed and vested in Joaquin Galan, his heirs and assigns, was and is vested in the said inhabitants of the town of Palafox or in their heirs or assigns. That the land described in plaintiff's petition is a part and parcel of the land of said porciones, the title to which was found to be vested by said judgment last aforesaid in the inhabitants of the town of Palafox; and the defendant, by his said purchase and long possession aforesaid, has acquired the title to the same and now has and holds all the right, title and interest in and to the same,
17 which the Government of Spain or the said inhabitants of the town of Palafox or any of them ever had or possessed, and defendant says that if he has not acquired such right, title and interest, then, he says, that the same is not vested in and has never been vested in or acquired by the plaintiff, the State of Texas, but remains outstanding in the said inhabitants of the town of Palafox, or in some of them or in their heirs or assigns.

All of which pleas hereinbefore set forth, the defendant is ready to verify; wherefore, defendant prays judgment that plaintiff take nothing by its suit, that the title to the said land described in plain-

tiff's petition be confirmed and vested in defendant as against the plaintiff, the State of Texas; that defendant be quieted in his title to the same, and that he recover from plaintiff all his costs herein expended; and defendant prays for such other and further relief as he may be entitled to in law and equity.

H. G. DICKINSON,
Attorney for Thomas O'Conor, Defendant.

(Endorsed:) No. 17,138. The State of Texas vs. Thomas O'Conor. Defendant's First Amended Answer. Filed May 5, 1902. Jas. P. Hart, Clerk. By J. H. Hart, Deputy.

18 *Judgment and Notice of Appeal.*

June 20th, 1902.

17138.

THE STATE OF TEXAS
vs.
THOMAS O'CONNOR.

And now on this the 7th day of May, A. D. 1902, this cause was called for trial came the parties plaintiff and defendant by their respective attorneys, thereupon came on to be heard the defendant's plea in abatement and demurrers, which after being argued and submitted were by the court overruled, and to which ruling of the court the defendant excepts, and thereupon the parties announced themselves ready and no jury being demanded by either party the matters of fact as well as of law were submitted to the court, and the court after hearing the pleadings, evidence and argument of counsel thereon, took said cause under advisement until this the 20th day of June, 1902, and at this date the court announces its dicision that the law on the facts is with the plaintiff in this case and that plaintiff is entitled to recover as prayed for in its petition:

It is therefore considered and ordered by the court that the plaintiff The State of Texas have and recover of and from the defendant Thomas O'Connor the title and the possession of the following described certain tract of land situated in the County of Webb in the State of Texas about 37 miles north 37° West from the town of Laredo, and which said land is more particularly described as follows, to-wit:

19 Beginning at a pile of rock on the East bank of the Rio Grande river at the mouth of San Pedro creek, an old corner;

Thence north 47° East 15088 varas to a corner;

Thence north 70° East 4152 varas to a corner;

Thence south 20° East 7359 varas;

Thence south 70° West 18420 varas, a corner on the north bank of the Rio Grande river;

Thence up said said river with its meanderings to the place of beginning, containing 19,410 13/100 acres, and that any title of the

said Thomas O'Connor in said land be and the same is hereby cancelled, set aside and annulled and that all cloud to plaintiff's title in and to said land be and the same is hereby removed, and plaintiff's title in and to said land be and the same is hereby forever established and quieted and that plaintiff have her writ of possession;

It is further ordered by the court that the plaintiff The State of Texas have and recover of and from the defendant Thomas O'Connor, all costs of this suit, for all which let execution issue.

Notice of Appeal.

To which judgment of the court the defendant excepts and in open court gives notice of appeal to our court of Civil Appeals of Texas for the third Judicial District of Texas.

It is further ordered that the parties be and they are hereby granted 10 days from and after adjournment of the present term of this court in which to prepare and file a statement of facts of this case.

20 *Statement of Facts.*

Filed June 28th, 1902.

In the District Court of Travis County, Texas, May Term, 1902.

No. 17138.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

Be it remembered that upon the trial of the above entitled and numbered cause in the District Court of Travis County the following facts were proven in evidence, viz:

Evidence Introduced by the Plaintiff, The State of Texas.

(1.)

A part of the deposition of THOS. O'CONOR, the defendant, who testified as follows:

My name is Thos. O'Conor. I reside in Nuevo Laredo, Mexico. I am the defendant in this case. I claim to be the owner of the land described in plaintiff's petition. I am in possession of this land. I deraign title to it through Daniel Ruggles. I have been in possession of this land either alone or jointly with Abraham de la Garza about twenty years.

(2.)

Deposition of WALTER PIERCE, who testified as follows:

My name is Walter Pierce. I reside in Laredo, Webb County, Texas. I am clerk of the District Court of Webb County. I have

made a careful search and examination of the papers on file in my office and have been unable to find the papers in the cause entitled Daniel Ruggles *vs.* The State of Texas in any case or of any date; nor are those papers in my possession; neither do I know
21 where such record or file papers are. I find from the minutes of the District Court Vol. 1, cause No. 11, entitled Daniel Ruggles *vs.* The State of Texas: another cause entitled the same No. 14; another cause entitled the same No. 69; another cause entitled the same No. 74; another cause entitled the same No. 16; another cause entitled the same No. 17. There are judgments and other proceedings as appears from the minutes of said court, a certified copy of all of which is hereto attached, marked exhibit No. 1, and made a part of my deposition. I was appointed clerk of the District Court on the 26th day of November, 1901, and have been clerk of said court ever since. I was appointed to fill the unexpired term of Sam Bratton, former clerk. I was never in any manner connected with said office prior to my appointment. I cannot tell from the records in my office when any of these cases were instituted and I have no information in reference to this other than that which I have been able to get from the court records, all of which is embraced in exhibit No. 1, heretofore mentioned in my direct interrogatory No. 2. I have made inquiry of all the attorneys at this bar for the papers in question and have failed to obtain any information from them in relation to their whereabouts. At present there are no attorneys at this bar who were practicing before this court prior to the year 1875. I have also made inquiry of the County Clerk and all other persons heretofore connected with either of these offices that I have been able to find and they all tell me they know nothing of these papers.

(3.)

Part of Exhibit No. 1 to depositions of Walter Pierce, as follows:

January Term, 1861. Minutes District Court of Webb County. (Vol. 1, p. 75.)

22 Jany. 12, 1861.

No. 11.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Plaintiff has leave to amend and cause continued.

Jany. 12, 1861.

No. 14.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

(Vol. 1, p. 75.)

The plaintiff has leave to amend and cause continued.

January Term, 1862. Minutes District Court, Webb County. (Vol. 1, p. 77.)

(No number given.)

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

This cause came on to be heard and pending the case the Court adjourned until tomorrow, (Wednesday), morning 9 o'clock.

WEDNESDAY (Third Day), *Jany.* 8, 1862.

The court was opened pursuant to adjournment.
Present as before.
The case of Daniel Ruggles *vs.* The State of Texas was again taken up and examined and final judgment given as follows, to-wit:

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Now on this day, to-wit: the eighth (8) day of January, A. D. 1862, the above stated case came on to be heard and it appeared to the court that some time previous to the year 1804 the government of Spain granted to Joaquin Galan a certain large tract of land situated on the east bank of the Rio Grande, embraced within the following boundaries, viz: Beginning at a well known place, called the Rincon de Galan or the Angostura, on the eastern bank of the Rio Grande said point being a small distance below the ancient town of
23 Palafox, running thence in a straight line North-easterly to a well known point called the Cerrito Prieto, being a prominent solitary eminence; thence in a westerly direction to another well known point called Almudes, this being a solitary hill or eminence; thence in a southerly direction to the bank of the Rio Grande in a straight line to a noted point called Arroyo de San Pedro, where the same empties into the Rio Grande, in the center of the same; thence down said river to the starting point, these said noted points forming all the ancient land marks or boundaries to said tract. It

further appeared to the court by original authentic documents that in the year 1805 said Joaquin Galan sold the said tract of land to one Manuel Garza, who settled upon the same and occupied it for many years, and that about the year 1810 the Government of Spain being desirous of forming a town on the river bank where the said Manuel Garza had planted his said ranch the said Government did then and there condemn and take from the said Manuel Garza for the use of the Government all that part of his said tract of land lying and fronting on the Rio Grande to the depth of Six Mexican Leagues, and did then and there lay out and establish the town of Palafox on the eastern bank of the Rio Grande with its exidos extending across the same and gave and donated the lands above and below the said town to the settlers of the same in the form of or shape of porciones running back for depth Six Mexican Leagues or 30000 varas, and that for the said condemnation the said Manuel Garza was reimbursed in lands lying above the town and jurisdiction of Palafox. It further appeared that the jurisdiction of Palafox extended five leagues above and the same distance below the center of the plaza of the said town, which or a part of the same were granted in porciones to the settlers. It further appeared that about the year 1818 the hostile Indians in large numbers surrounded the said town of Palafox and destroyed
24 the same by fire and drove off the stock and broke up the said settlement. It further appeared by the testimony of old and respectable citizens of Laredo that they knew of the titles to the land in question and by one of them that he had read said titles and knew the land marks called for in the same; that when the town was destroyed all the archives of the same were burnt, most of the inhabitants were killed and only three or four houses escaped being burnt by reason of dirt roofs, the inmates escaping in the night. It further appeared that the region of these lands is and since said occurrence has been an Indian range and to this day unsafe for settlers. It further appeared to the court that subsequently to the destruction of said Palafox some of the heirs of Manuel Garza, deceased, sold their rights in said lands to Daniel Ruggles, the petitioner in this case. All of which said facts having been proven to the satisfaction of the court by many of the oldest inhabitants of the town of Palafox and Laredo, it is, in consideration of the premises, hereby ordered, adjudged and decreed by this court that the said ancient title of Joaquin Galan to the said lands be confirmed to him, his heirs and assigns (except that part which was condemned to the use of the settlers) in the following manner, to-wit: Beginning at a point on a direct line between the Rincon de Galan and the Cerrito Prieto, distant Six Mexican Leagues of Five Thousand varas each from the left or eastern bank of the Rio Grande; thence in a straight line to the Cerrito Prieto; thence westerly to a hill called "El Almud";—thence southerly in a straight line towards the mouth of the San Pedro creek or arroyo and the center of the same to a point Six Mexican leagues distant from the river measured by a line drawn parallel to said river, as the rear line of the jurisdiction of the said town of Palafox; thence easterly along said parallel line to the point of be-

25 ginning; and that they have and recover from the State of Texas all the lands embraced within the aforesaid boundaries, constituting and making ——— leagues of land to be surveyed by the proper officer and the field notes to be returned unto the General Land Office of the State with all convenient speed; that the plaintiff in this suit be condemned to pay all costs of this suit and the fees and charges provided by law, all of which in accordance with the provisions of an act of the Legislature of this State entitled "An Act to ascertain and adjudicate certain legal claims for lands against the State situated between the Nueces River and the Rio Grande," approved Feb'y 11, 1860. (Minutes District Court Webb Co., Vol. 1, pp. 77, 78, 79.)

January Term, 1862.

No. 11.

January 9, 1862.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Continued by petitioner with leave to amend the petition herein.

(Minutes, Vol. 1, p. 82.)

(No number given.)

January 10, 1862.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Now comes the plaintiff by his attorney Jno. C. Evins and made a motion for a new trial, which said motion was overruled.

(Minutes, Vol. 1, p. 84.)

June Term, 1869.

(No number given.)

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

26 Whereas it appears to the court that by consent of parties at a former term of this court a motion for change of venue in the above stated cause was granted changing it to Nueces County, and it further appearing to the court that said change was

never carried into effect; therefore, by consent of parties it is ordered that the case be reinstated on the docket for trial in this Webb County, and the order changing said venue be set aside.

(Minutes, Vol. 1, p. 134.)

June Term, 1869.

(No number given.)

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Motion to interpret former judgment and decree by plaintiff.

June 23, 1869.

This motion came on to be heard in the above stated cause and on examination the court is of the opinion that the judgment and decree in the above stated case is vague and uncertain but is binding, final, and beyond the jurisdiction of this court until the same shall have been reversed by the Supreme Court; hence the court overrules the motion and refuses to grant the petition embraced therein, to which the plaintiff excepts.

(Minutes, Vol. 1, p. 135.)

Dec. Term, 1870.

Jan. 4, 1871.

No. 16.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Trespass to try title. Dismissed for want of jurisdiction.

(Minutes, Vol. 1, p. 186.)

Dec. Term, 1870.

Jan. 4, 1871.

No. 17.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Trespass to try title. Dismissed for want of jurisdiction.

(Minutes, Vol. 1, p. 186.)

27 March Term, 1872.

No. 69.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Petition to reinstate former suits for confirmation of title.

M'ch 8, 1872.

Now on this day came on to be heard the petition of plaintiff in the above entitled cause, which after argument of counsel was sustained by the court and the said suits bearing file mark 16 and 17 and entitled Daniel Ruggles *vs.* The State of Texas, Trespass to try title, were ordered reinstated and docketed, now as of then.

(Minutes, Vol. 1, p. 285.)

March Term, 1872.

(No number given.)

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

M'ch 9, 1872.

Now on this day came on to be heard the motion of the plaintiff herein to review and correct a judgment of this court rendered on Jan. 8th, 1862, and after hearing argument of counsel therein—because the law appears to be for the defendant—the said motion was on consideration by the court overruled.

Here the plaintiff, The State of Texas, rested its case.

Evidence introduced by the defendant, Thos. O'Conor.

(1.)

Testimony of THOS. O'CONOR, defendant, by deposition as follows: My name is Thos. O'Conor. I reside in Nuevo Laredo, Mexico. I claim to be the owner of the land described which is the
28 subject of this suit. I am in possession of this land. In 1881 Abraham de la Garza and myself bought from J. V. Spohn by deed and from A. E. & H. Spohn and Alexander Hamilton by

deed an undivided interest of 37423 87/100 acres of land in the Palafox and Balconitas tracts of land in Webb county. It was understood and agreed between the owners of land in these tracts that each would hold a certain defined portion of it. Abraham de la Garza and myself occupied jointly the land which is the subject of this suit and certain other land adjoining it on the south and east, supposed to amount to about our interest, from the date of our purchase in 1881 until the land of the Palafox tract was partitioned by a judgment of the district court of Webb County in 1893. While we occupied said land jointly we used it for grazing our sheep and cattle; we built houses and stock pens on it and a portion of it suitable for that purpose was cultivated. We kept other persons off the land and used it for our own purpose. The judgment of partition spoken of above allotted to me the land which is the subject of this suit and I have been in possession of it exclusively since such judgment, which was rendered some time in 1893, keeping intruders off it, using it for grazing sheep, cattle and cultivating a part of it suitable for cultivation. The taxes on these lands prior to partition were paid by myself and Abraham de la Garza. Since partition in 1893 I have paid all the taxes assessed against my share. I have been in possession of this land either alone or jointly with Abraham de la Garza about twenty years and I estimate that I have paid the State of Texas as taxes on it during that time about $4,500. I paid the taxes to the tax collector of Webb County. This land is a part of the Palafox tract of land. I have stated above how and when I acquired this land. I estimate that I paid about $8,000.00 for this land which
29 is the subject of this suit. I had no knowledge, notice or suspicion that the State of Texas claimed any interest in or title to this land at the time I purchased it. If I had had any information I would not have purchased it. The State has never before this suit claimed this land and I have been in peaceable possession of it alone or as joint owner for more than twenty years. I deraign title through Daniel Ru,gles. I attach hereto the tax receipts for taxes paid by me for the years 1893, 1895, 1897, 1898, 1899, 1900, and 1901. I have paid the taxes for 1894 and 1896, but have mislaid or lost the receipts. Prior to 1893 the taxes were paid by myself and Abraham de la Garza. I do not know where the tax receipts for the years prior to 1893 are or in whose possession they are. Abraham de la Garza died several years ago and they may have been in his possession as he had some papers relating to the land. The tax receipts show that the taxes were paid on 19410 acres of land, Joaquin Galan, original grantee, Abstract No. 65.

(2.)

Testimony of DARIO SANCHEZ, by deposition, as follows:

My name is Dario Sanchez. I reside in Laredo, Texas, where I was born and raised. I am by occupation a stock raiser. I know the defendant. I am acquainted with the land which is the subject of this suit. Thos. O'Conor, the defendant, has been in possession of it since about 1881 or 1882, grazing his sheep and other stock thereon in company with Abraham de la Garza. He has been

claiming it as owner during that time. He is now using it for the grazing and herding of sheep, cattle and horses. Daniel Ruggles was in possession of this land claiming it as owner prior to defendant. He, Ruggles, rented the land to different people, who used it for grazing and herding stock. The land is a part of the Galan
30 grant commonly known as the Palafox tract. A part of this land is situated in the Palafox tract and a part may be in the Balconcitas tract. It is located in the northwest corner of the tract of land known as the Palafox tract. I am acquainted with the land known as the Palafox or Galan grant. I have been acquainted with it for fifteen or twenty years. This land was held in common by the owners or claimants. In 1893 this land was partitioned; and since then has been held by the owners herding sheep, goats, cattle and horses on their respective parts. The lands embraced in the said Palafox tract or Joaquin Galan grant were held in common by the owners prior to 1893. These owners in common used the land for grazing stock; they have had ranches, camps, fields and have herded their stock on the land for over twenty five years.

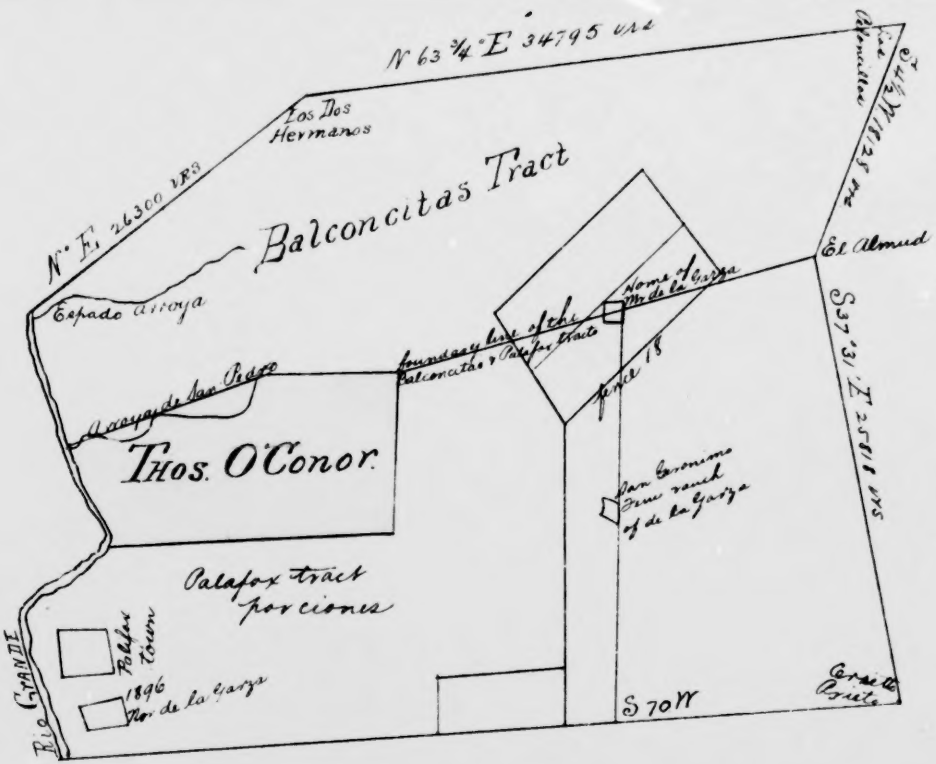
I attach a plot showing the Galan land designated as the Palafox tract. That tract of land as shown by the plot shaded blue with his name thereon is the tract claimed by the defendant. The patented portion of the Galan tract is all that part of the tract that extends back of the Palafox porciones.

No one but the officer taking these depositions and his son, W. W. Winslow, who is his stenographer, and type-writer, was present, when I gave my answers to these interrogatories. I have not discussed my testimony or what it would be with any one. I have stated every thing from my own knowledge.

(Here follows diagram marked p. 31.)

No. 2316.
Atkinson
vs.
Texas
p. 31

Plot referred to in deposition.



31.

32 (3.)

Certified translated copy from the General Land Office of Texas, of a power of attorney from Joaquin Galan to Jose Galan, his son, authorizing and empowering him as his attorney in fact "to receive and recover judicially or extrajudicially the donation of land which he, Joaquin Galan, has for his own in possession and proprietorship in the jurisdiction of San Agustine de Laredo as well as also that of the Garrison of San Juan Batista de Rio Grande; and having thus acquired said lands he may sell them or rent them out as may seem to him best." This power of attorney is dated the 11th day of December, 1804; and is on file in General Land Office of Texas in the Spanish archives.

(4.)

Certified translated copy from the General Land Office of Texas of a deed of conveyance from Juan Jose Galan, son of Joaquin Galan, reciting that Joaquin Galan had conferred upon him lawful power to sell the lands which had been granted to him the said Joaquin Galan on the margin of the Rio Grande on the east side between the jurisdiction of the town of San Agustine and the jurisdiction of Rio Grande; that by virtue of said power he grants and gives in real sale by right of inheritance forever to Manuel Garza a resident of this town (San Agustine) for him, his children and successors or to the person that may have his voice or right the said land granted to said Joaquin Galan, that is to say, the land from the Rincon de Galan running a straight line up the river unto where the San Pedro Creek enters the river with its corresponding depth as recited in the grant of said lands to Joaquin Galan. This deed is dated May 13, 1805, and was recorded in the record of deeds of Webb County, Texas, Nov. 8, 1848; and is on file in the Spanish archives of the Land Office of Texas.

33 (5.)

Deed of conveyance from Jesus Gutierrez and others, heirs of Manuel Garza, by their attorney in fact Joaquin Garza, to Daniel Ruggles conveying "all their right, title and interest, whether resulting to them as heirs of Manuel Garza, deceased, or derived by them from any other source whatever—in and to a certain tract of land lying and being in Webb County, State of Texas and described as follows—a tract of land fronting on the river Rio Grande, originally granted by the government of Spain to one Joaquin Galan and conveyed by said Joaquin Galan to the said Manuel Garza about the year A. D. 1805; said tract of land commencing at a place on said river about 30 miles above the said town of Laredo, called 'El Rincon de Galan' and running from thence up the said river to an arroyo or dry creek, called arroyo de San Pedro, being about five thousand Mexican varas or one Mexican league more or less front and running back from said river in the direction mentioned in said grant from the Government of Spain to said Joaquin Galan thirty thousand Mexican varas or six Mexican leagues for depth." This deed is dated Jan. 20, 1855, acknowledged same day, filed for record and

recorded in the record of deeds of Webb County, Jan. 20th, 1855, in Book "C" pp. 303-306.

(6.)

Deed of conveyance from Joaquin Garza, administrator of the estate of Manuel Garza, deceased, to Daniel Ruggles, conveys by order of Probate Court all the interest of the estate of Manuel Garza in and to five or six "*porciones of land*," more or less, "situated in Webb County, State of Texas, within the old jurisdiction of the old town of Palafox, granted by the government of Spain to one Joaquin Galan having a front on the Rio Grande from the place called 'Rincon de Galan' to Arroyo de San Pedro; said porciones having each one thousand varas of front on the Rio Grande and 30000
34 varas of depth." This deed is dated March 16th, 1855, acknowledged same day and recorded in the record of deeds of Webb County, Texas, on March 17, 1855.

(7.)

Deed of conveyance from Daniel Ruggles and wife to Jeremiah J. West, conveying an undivided interest of 21890 acres of land in the Palafox and Balconcitas tracts of land situated in Webb County, State of Texas, which tracts comprise the grant from the Crown of Spain to Joaquin Galan and confirmed to his heirs and assigns by a decree of the District Court of Webb County, rendered March 13, 1872. This deed is dated Sept. 13, 1876, acknowledged same day, and recorded in the record of deeds of Webb County.

(8.)

A certified copy of the last will and testament of Jeremiah J. West appointing John M. Gordon his executor with authority to sell his real and personal property, with the certificate of the probate of said will and of the due qualification of the said John M. Gordon as such executor; all filed for record in the County Clerk's office of Webb County, Texas, and recorded in the record of deeds of said County in Book D. Vol. 9 on pp. 81 to 83, on the 15th day of February, 1881. The will is dated the 11th day of April, 1879, and the certificate states that the said executor qualified on the 28th day of April, 1879.

(9.)

A certified copy of a deed of conveyance from John M. Gordon, acting as the executor of the estate of Jeremiah J. West, conveying to A. E. and H. Spohn and Alexander Hamilton in fee simple all the right, title and interest which the said Jeremiah J. West had at the time of his death in and to that tract of land situated in
35 Webb County, State of Texas, known as the Joaquin Galan grant, more particularly described by metes and bounds in a decree of the District Court of Webb County, State of Texas, rendered on the 13th day of March, 1872, confirming the title to said lands to said Galan, his heirs and legal assigns, and comprising the tracts known as Palafox and Balconcitas; the said interest of said

Jeremiah J. West being an undivided interest of 21890 acres. This deed is dated January 11th, 1881; and was recorded in the record of deeds of Webb County on the 14th day of Feby., 1881.

(10.)

A deed of conveyance from A. E. & H. Spohn and Alexander Hamilton to Thomas O'Conor and A. de la Garza, conveying in fee simple an undivided interest of 25,565 acres in the tract of land situated in Webb County, State of Texas, known as the grant from the Crown of Spain to Joaquin Galan, which embraces the two tracts known as the Palafox and Balconcitas. This deed is dated Feby. 15, 1881. Acknowledged same day and recorded in the record of deeds of Webb County on the 18th day of Dec., 1886.

(11.)

A deed of conveyance from J. V. Spohn to Thomas O'Conor and A. de la Garza, conveying in fee simple one half interest in 23717 78 acres of land; the same being his undivided interest in that tract of land in Webb County, State of Texas, known as the grant from the Crown of Spain to Joaquin Galan, comprising the tracts of land known as the Palafox and Balconcitas tracts. This deed is dated July 12, 1881; and recorded in the record of deeds of Webb County on the 18th day of December, 1886.

(12.)

Certified copy of a judgment of partition rendered by the
36 District Court of Webb County, State of Texas, in cause No. 891 and entitled Arthur E. Spohn *et als. vs.* Thomas O'Conor *et als.*, by which the land described in plaintiff's petition herein and the subject of this suit was assigned and allotted to the defendant Thos. O'Conor. This judgment was rendered on the 16th day of May, 1893, and by it the lands in the Palafox and Balconcitas tracts were partitioned amongst the parties to the suit.

(13.)

That part of Exhibit No. 1 to depositions of Walter Pierce not introduced by plaintiff, as follows:

Minutes of the District Court of Webb County, Texas, March Term, 1872.

Minutes, Vol. 1, p. 292.

No. 74.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

M'CH 12, 1872.

This day came the parties in this cause, the plaintiff by attorney and the State by the Hon. District Attorney, F. E. Macmanus, and having announced themselves ready for trial and the cause submitted to the court on the pleadings, evidence and argument of counsel, after due consideration of which, it appearing to the court that heretofore, to-wit: on the 8th day of January, A. D. 1862, a decree was rendered by this court in the cause entitled D. Ruggles *vs.* The State of Texas, numbered on the docket No. 14, being for confirmation of title to the Palafox tract of land of Joaquin Galan Grant under the Crown of Spain; and it further appearing to the court that said decree was uncertain, vague and defective and improvident and unauthorized by and repugnant to the pleadings and the evidence and in violation of law; and it not appearing that the plaintiff in said suit was represented at the trial thereof, and if further appearing to
37 the court that the said plaintiff was prevented by accidents of the war at that time existing from presenting his cause properly to this court; and it further appearing to the satisfaction of this court that had the facts shown at the trial hereof been presented to the court on the trial of said cause No. 14, the said decree so far as it casts a cloud on or impairs validity of, the title of said plaintiff to the said Palafox tract of the said Galan grant would not have been so rendered or if said facts had been presented in the motion for a new trial, that the judgment so rendered would have been set aside, and that the plaintiff has shown to this court good, sufficient and satisfactory proof of his inability by no fault of his own to so present it; and it further appearing that the terms of this court were suspended from and after the said term at which said decree was rendered until the fall term in the year 1867 and that courts were subsequently held with irregularity and uncertainty up to a very recent date, to-wit: December A. D. 1870, and that the petition herein filed discloses sufficient cause for the equitable interposition of this court and that the same is sustained by the proofs adduced in support thereof, it is ordered, adjudged and decreed by the court that the prayer of the petitioner be granted, that said judgment be vacated and set aside and that the said cause be reinstated and stand for trial as if no such judgment had been rendered.

No. 16.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

No. 17.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Trespass to Try Title.

It appearing that the file number in the above cases are erroneous the papers in said cause being originally numbered 11 and 14, it is ordered by the court that the file numbers be changed to 11 and 14 so as to conform to the original file numbers.

(Minutes Vol. 1, p. 295.)

38 No. 11.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

No. 14.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

MARCH 13, 1872.

Motion of the plaintiff in the above entitled suits to consolidate said suits coming on to be heard and it appearing to the court that they were of like nature and the land claimed under each being covered by the same original grant, it is ordered that the motion be sustained.

Nos. 11 and 14.

DANIEL RUGGLES
vs.
THE STATE OF TEXAS.

Suit for Confirmation of Title.

MARCH 13, 1872.

This day coming on to be heard the above entitled cause, appeared the State of Texas by the District Attorney, Frank E. Macmanus, and the plaintiff by his attorney, and the parties announced themselves ready for trial, the said cause was submitted to the court under the provisions of an Act of the Legislature of the State of Texas,

approved the 11th day of February, A. D. 1860, entitled "An Act to ascertain and adjudicate certain legal claims for land against the State situated between the Nueces and Rio Grande Rivers." Whereupon it appearing to the satisfaction of the court that the plaintiff Daniel Ruggles is a legal assignee of the original grantee of a tract of land, the grant of which emanated from the Spanish Government and was issued sometime about the year A. D. 1767, the said land being situated between the Nueces and Rio Grande rivers, within the County of Webb for the greater portion of its extent and below
39 a line drawn from the upper boundary of Webb County to the mouth of the Moros Creek emptying into the Nueces river; and that on the 16th day of June, A. D. 1860, said plaintiff in accordance with said act filed in this court his two several petitions for the investigation and confirmation respectively of the title to the two several tracts or parcels of said grant, the suits on which said petitions were subsequently by order of this court consolidated and said petitions being in manner and form as prescribed by the provisions of said legislative act hereinbefore referred to; and the jurisdiction of this court having once attached in the premises and still attaching therein, and that plaintiff had not been guilty of any laches in the prosecution of this his suit; when the court carefully inspected and investigated the evidences of title in the Spanish language accompanying said petitions and introduced in evidence, under which the land claimed by said plaintiff is held, and having found such evidences of transfers to Manuel Garza, petitioners assignor, being formally executed deeds of sale from Joaquin Galan, the original grantee from the Spanish Government, and the said deeds having been executed on the 13th day of May, A. D. 1805, and having found said deeds genuine and perfect and the loss of the original testimonio of the Spanish Grant to the said Joaquin Galan, under whom plaintiff claims by direct chain of title, being satisfactorily proved to this court by the testimony of several of the oldest inhabitants of Laredo and former inhabitants of the town of Palafox to have occurred in the destruction of the house of Manuel Garza on said lands by the Indians in the year of our Lord 1818, and it further having been proven to this court by the testimony of the same witnesses that said original grantee Joaquin Galan had been in the peaceable, notorious, continued and undisturbed occupancy
40 of the lands in this suit claimed for many years anterior to the said sale to Manuel Garza using, cultivating and enjoying the same and that Manuel Garza holding by purchase for himself as aforesaid the lower portion and as guardian of his infant son Joaquin Garza the upper portion of said grant, had used, occupied and cultivated the same and had continued in their uninterrupted possession of the whole of said grant, building and occupying houses on the same and cultivating fields and grazing herds, and that his possession was notoriously claimed to be by virtue of said grant and transfers and his said possession or title was never interrupted or questioned but always acknowledged, recognized and acquiesced in by the whole world. That the possession of the said Manuel Garza continued from the date of said purchase of the 13th day of May, 1805, until

compelled by the hostility of the Indians to remove his family several years after the destruction of the settlement of Palafox in A. D. 1818; and it satisfactorily appearing to the Court, upon the testimony aforesaid, that the locality and boundaries and the most noted and original corners of said grant herein claimed were well defined and known and that said land came within the following metes and bounds, to-wit: Beginning at the lower or southwest corner of the grant at a stone mound at "El Rincon de Galan;" thence North 60° East 6700 varas to the top of a hill through a thicket at 22870 varas a water hole, at 26370 varas the Arroyo de Santa Isabel, at 27060 varas Eagle Pass road, at 48350 varas round hill called Cerrito Prieto, southeast corner; thence North 47° 30′ west 28010 varas to El Admud, another ancient land mark; thence North 0° 45″ E. 16850 varas to Los Piloncillos, a round hill, the north-east ancient corner; thence South 53° 30′ West 44840 varas to Los Dos Hermanos, also an ancient land mark; thence South 12° 30′ West 26006 varas to the mouth of
41 the Arroyo de la Espada where it empties into the Rio Grande, being another ancient land mark and the Northwest corner of this grant; thence down the Rio Grande with its meanders including all the land on the Texas side within the above described metes and bounds to the point of beginning at El Rincon de Galan, containing about sixty-three square leagues and 5,205,286 square varas of land. And the court having heard and considered the pleadings, evidence and argument of counsel and being fully advised of the law and the facts is of the opinion that Joaquin Galan under whom the plaintiff claims by valid transfers and duly proved chain of title did hold possession and occupy said above described tract of land himself and by his assigns under a complete and perfect title for the same emanating from the Spanish Government and that there are no salt springs or lakes or mines of gold, silver, copper or lead, not any islands of the State within the limits of said grant, it is ordered, adjudged and decreed that the title to the above described premises be confirmed to Joaquin Galan, the original grantee, his heirs and legal assigns; under and by virtue of the powers on this court conferred, by and in it vested under the Legislative act hereinbefore referred to, and it is further ordered that plaintiff pay all costs in this behalf expended and in addition that a fee of twenty five dollars be taxed by the Clerk against him to be paid to the District Attorney, and for all of which execution may issue. (Minutes of the District Court of Webb County, Vol. 1, pages 296, 297, 298, 299.)

Plff. objected to the introduction of the judgment of the District Court of Webb Co. of March 12, 1872, purporting to set aside the judgment of 1862 and also to the introduction in evidence of the purported judgment of the District Court of Webb County of March 13th, 1872, because the said court had no authority or jurisdiction to set aside the decree of Jany. 8, 1862, after the adjournment
42 of the term of the court at which it was rendered and also because the District Court of Webb County had no authority power or jurisdiction over cases brought for the confirmation of titles against the State after Feby. 11, 1865, for which reasons the purported judgments objected to were and are absolutely void,—which

objections the court overruled and admitted the said order and judgment in evidence, the court stating at the time that the court was of the opinion that said objections should be sustained and that the evidence was admitted only in order that the proper judgment might be rendered on appeal in case such evidence should on appeal be held admissible, to which action of the court in overruling such objections the plaintiff then and there excepted.

(14)

Certified copy of the minutes of the Supreme Court of Texas in cause No. 1762, entitled The State of Texas *vs.* Daniel Ruggles. Error from Webb, in the following words and figures, to-wit:

1762.

THE STATE OF TEXAS
vs.
DANIEL RUGGLES.

Error from Webb.

TUESDAY, *May 28th*, 1874.

Submitted by defendant in error on motion to dismiss.

1762.

THE STATE OF TEXAS
vs.
DANIEL RUGGLES.

Error from Webb.

MONDAY, *June 1st*, 1874.

On this day came on to be heard the motion of the defendant in error to dismiss this cause for want of service of the writ of error and the same being considered, it is ordered by the court that this cause be dismissed and this decision be certified below for observance.

43

1762.

THE STATE OF TEXAS
vs.
DANIEL RUGGLES.

Error from Webb.

TUESDAY, *July* 14, 1874.

Submitted on motion of plaintiff in error to withdraw transcript.

1762.

THE STATE OF TEXAS
vs.
DANIEL RUGGLES.

Error from Webb.

FRIDAY, *July* 17, 1874.

On this day came on to be heard the motion of plaintiff in error for leave to withdraw the transcript of the record, filed in this cause and the same being considered, it is ordered by the court that said motion be granted and that plaintiff in error have permission to withdraw said transcript upon leaving a certified copy of the proceedings in error on file with the papers in said cause.

CLERK'S OFFICE, SUPREME COURT.

I, Chas. S. Morse, Clerk of the Supreme Court of Texas, hereby certify that the foregoing page contains a true and correct copy of all the orders and judgments entered by said court in cause No. 1762, entitled, The State of Texas *vs.* Daniel Ruggles, Error from Webb, as they appear in the minutes of said court on pages 424, 430, and 501–'2 on the respective dates given in said certified copy.

Witness my hand and seal of said court at Austin this the 3d day of May, A. D. 1902.

CHAS. S. MORSE, *Clerk*.
By F. T. CONNERLY, *Deputy*.

44 THE STATE OF TEXAS, *District of Webb:*

Survey No. —.

Field notes of a survey of a tract of land situated on the east bank of the Rio Grande originally granted by the Spanish Government to Joaquin Galan A. D. 1767, resurveyed for his heirs and legal assigns, according to an act of the legislature of the State of Texas, approved February 10, A. D. 1852. This grant is situated between 40 and 60 miles above Laredo in the County of Webb and was surveyed by R. C. Trimble formerly district surveyor, Webb District, now supposed to be deceased.

This grant contains about 63 square leagues and 5,205,286 square varas of land:

Beginning at the lower or the S. W. corner of this grant on the Rio Grande at a stone mound, S. 26° 05′ E. 33006 varas from the upper or S. W. corner of Porcion No. 12 granted to Manuel Perez, surveyed, set for the S. W. corner of this survey. Thence N. 60° E. 6700 varas to the top of a hill, through a thicket 22870 varas a water hole, at 26376 varas the arroyo de Santa Isabel, at 27060 varas Eagle Pass road, at 48,250 varas a round hill called Serrito Prieto, the S. E. ancient corner; thence North 47° 30′ West 28010 varas

to "El Almud," another ancient land mark; thence North 0° 45′ east 16850 varas to Los Peloncillos, a round hill, the N. E. ancient corner. Thence South 53° 30′ West 34840 varas to "Los Dos Hermanos" also an ancient land mark; thence South 12° 30′ West 26003 varas to Arroyo "de la Espada," where it enters into the Rio Grande being another ancient land mark and the N. W. corner of this grant. This line at 1800 varas from the Rio Grande crosses a hill, at which point the survey of the meanderings of the river front closes. Beginning again at the lower or S. W. corner "El
45 Rincon de Galan;" thence up the Rio Grande as follows: North 5° West for a base line at 2000 varas offset to the left 1700 to the river and at 4000 varas offset to the left 2200 varas to the river and at 9050 the mouth of the Arroyo de San Pedro; thence North 60° West at 3800 varas offset to the left 2200 varas to the river, at 7600 varas passes the bank of the river at 10,600 varas offset to the left 2000 varas to the river, at 12140 varas offset to the left to the river, or the mouth of the arroyo "de la Espada" 1800 varas N. 12° 30′ East from the river this survey closes.

The Island of Balconcitas in the Rio Grande in front is also embraced in this grant. Bearings marked X X.

R. GRANT,
J. C. STANDARD,
Chain Carriers.

Surveyed 10th September, 1855.

THE STATE OF TEXAS, *District of Webb.*

I, R. C. Trimble, District Surveyor for the District of Webb, do hereby certify under my official oath, that the foregoing survey and field notes are and done according to law and are recorded in Book "A" page 47 this 1st day of July, 1856.

(Signed) R. C. TRIMBLE,
D. S. for W. C.

I, Samuel M. Jarvis, District Surveyor of Webb District do hereby certify that I have examined the accompanying plat and field notes and find them correct as shown by calculation on the back hereof and that they are recorded in my office in book "A," folio 67.

Given under my hand this 9th day of December, 1871.

SAMUEL M. JARVIS,
District Surveyor, Webb Co.

46 Endorsements: File 554. San Patricio ist. class. Field notes for 63 Leagues & 5,285,536 sq. vrs.

GENERAL LAND OFFICE, AUSTIN, TEXAS, *May* 5, 1902.

I, Charles Rogan, Commissioner of the General Land Office of the States of Texas, do hereby certify that the above and foregoing is a true and correct copy of the with all the indorsements thereon now on file in this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the date last above written.

(Signed) CHARLES ROGAN,
Commissioner General Land Office.

Plff. Objected to the introduction in evidence of the foregoing field notes because the survey is not shown to have been made under any lawful authority, which objection was by the court overruled, to which ruling the plff. excepted.

(16)

A certified copy of a patent from The State of Texas to Joaquin Galan, his heirs and assigns, in the following words and figures, to-wit:

"No. 514. Vol. 24."

In the name of the State of Texas, to all to whom these presents shall come:

Know ye, I, L. S. Ross, Governor of the State aforesaid, by virtue of the authority vested in me by the law and in accordance with the laws of said State in such case made and provided do by these presents grant to Joaquin Galan, his heirs and legal assigns and their heirs and assigns forever, Thirty-one and ½ (31½) Leagues of land situated and described as follows, In Webb County, known
47 as Survey No. 2182 called Balconcitas on the waters of Rio Grande about 37 miles N. 30° W. from Laredo, By virtue of a grant from the Crown of Spain, dated A. D. 1767, and confirmed by the judgment of the District Court of Webb, Texas, of date March 13th, 1872, under and by virtue of the authority of the law of the 11th day of February, 1860, passed by the 8th Legislature of the State of Texas, Chapter 78, page 111 of the session acts of said legislature, Beginning at a pile of rock on the E. bank of Rio Grande at the mouth of San Pedro Creek, an old corner, Thence with the meanders of the river N. 36° 38′ W. 1295 varas, N. 22. 44 W. 1115 vas., N. 66¾ W. 1620 vrs., N. 49 W. 680 vrs., N. 19. 5 W. 282 vrs., N. 413 vrs., N. 16 W. 627 vrs., N. 10 E. 600 vrs., N. 45 E. 740 vrs., N. 36 E. 1140 vrs., N. 17½ E. 752 vrs., N. 3½ W. 276 vrs., N. 13¼ W. 1008 vrs. to a pile of rock at the mouth of Espada creek an old corner. Thence N. 18° E. 26300 vrs. to a pile of rocks between two hills called Los Hermanos an original corner. Thence N. 63¾ E. 34793 vrs. to pile of rocks on hill called the Peloncillo an original corner. Thence S. 11½° W. 18128 vrs. to pile of rocks on top of a hill called El Almud an original corner. Thence S. 47° 10′ W. 45900 vrs. to the place of beginning, Bearings mkd. X. Hereby relinquishing to them the said Joaquin Galan and the grantees herein and their heirs and assigns forever all the right and title in and to said land heretofore held and possessed by the said State and I do hereby issue this Letter Patent for the same.

In Testimony whereof I have caused the seal of the State to be affixed as well as the seal of the General Land Office.

Done at the City of Austin on the eighth day of July in the year of our Lord one thousand eight — and eighty seven.

L. S. ROSS, *Governor.*

R. M. HALL,
Com'r of the G'l L'd Office. [SEAL.]

48 This patent was duly recorded in the record of deeds of Webb County on the 29th day of July, 1887.

(17.)

A certified copy of a patent from the State of Texas to the heirs of Joaquin Galan, deceased, their heirs or assigns, in the following words and figures:

No. 370. Vol. 25.

In the name of the State of Texas To whom these presents shall come:

Know ye, I, C. A. Culberson, Governor of the State aforesaid, by virtue of the power vested in me by law and in accordance with the laws of said state in such case made and provided do by these presents grant to the heirs of Joaquin Galan, deceased, their heirs or assigns forever, Sixty Six Thousand Nine Hundred and Seventy-five (66,955) acres of land, situated and described as follows: In Webb County, being Survey No. 2292 on the waters of Cuchillo creek a tributary of the Rio Grande about 32 miles North from Laredo, By virtue of a decree of confirmation by the District Court of Webb County, Beginning at a large stone on the S. B. line of sur. No. 2182 in the name of Joaquin Galan that brs. N. 48° 19′ E. from the south corner of survey No. 2182, 30000 vrs. to the mouth of San Pedro creek. Thence N. 48° 19′ E. 15233 vrs. to a stone monument on top of a hill called El Almud. Thence S. 37° 30′ E. 25818 vrs. to a stone monument on the top of a hill called Serrito Prieto. Thence S. 70° W. along the S. B. line of this survey at 950 vrs. road, at 4670 vrs. Pass tank, at 13300 vrs. la Moca Creek, 19173 vrs. to a mes. post in the center of a creek called Palito Blanco, for the S. W. corner of this survey, that brs. 30,000 vrs. N. 70 E. from the S. W. corner of the Palafox grant. Thence North 28° 13 W. cross Cuchillo creek
49 19190 vrs. to the place of beginning. Bearings mkd. X. Hereby relinquishing to them the said heirs of Joaquin Galan, deceased, and their heirs or assigns forever, all the right and title in and to said land, heretofore held and possessed by the said State of Texas, and I do hereby issue this letter patent for the same.

In Testimony whereof I have caused the seal of the State to be affixed as well as the seal of General Land Office. Done at the City of Austin on the fourth day of October, 1898.

[SEAL.] C. A. CULBERSON,
Governor.

[SEAL.] ANDREW J. BAKER,
Com'r. of the Gl. Ld. Office.

This patent was duly recorded on the 9th day of June, 1898, in the record of deeds of Webb County.

(18.)

Defendant also introduced in evidence a certified copy of the judgment of the District Court of Webb County, State of Texas, rendered and given on the 8th day of January, 1862, in the cause entitled Daniel Ruggles *vs.* The State of Texas; being the same judgment that was introduced in evidence by the plaintiff as a part of the deposition of Walter Pierce in paragraph No. 3 of plaintiff's evidence as above set forth.

(19.)

Defendant also introduced in evidence a certified copy of the judgment of the District Court of Webb County, State of Texas, rendered and given on the 13th day of March, 1872, in the consolidated causes Nos. 11 and 14 entitled Daniel Ruggles *vs.* The State of Texas; being the same judgment that is set out in the exhibit to the depositions of Walter Pierce as appears from paragraph No. 13 of the evidence introduced by defendant herein above stated and specified.

50 (20.)

An Act of the Legislature of the State of Texas, approved April 4th, 1881, entitled "An Act to authorize and require the issue of patents to lands situated between the Rio Grande and Nueces rivers, the titles to which have been confirmed under the act of February 11th, 1860," in the following words and figures; to-wit:

SECTION 1. Be it enacted by the Legislature of the State of Texas that whereas many suits to confirm land titles for land between the Nueces and Rio Grande rivers were brought within three years from and after the passage of the Act of February, 1860, and in compliance with the terms thereof, but, owing to the war and other causes, were not finally adjudicated until after such three years had expired; and whereas the Commissioner of the General Land Office has refused to issue patents for titles not confirmed within such three years; and, whereas, it is just and equitable that parties who in good faith and diligence, have attempted to comply with the terms of said act, should receive the full benefit thereof; therefore the Commissioner of the General Land Office is hereby authorized and required to issue patents to all lands between said rivers when suits to establish same under said act have been commenced within three years from the passage of the same and when the proper district court has finally confirmed such titles:

SEC. 2. Whereas, several important railroads are surveying lines through the lands involved in this act, and whereas it is important that the titles to said lands should be settled at once, in order that the right of way may be granted to said railroads; therefore, urgency exists that this act take effect at once and it is enacted that the same take effect from its passage.

51 We hereby agree that the foregoing is a true and correct statement of the facts proven on the tria lof the above entitled and numbered cause.

H. G. DICKINSON,
Attorney for Defendant, Thomas O'Conor.
C. K. BELL,
Atty. Gen'l., Atty. for Pl'ff.

I hereby certify that the foregoing statement of facts was presented to me on this the 28th day of June, 1902, during the term at which said case was tried, has been examined and is hereby approved; also that the plaintiff's bills of exceptions embraced in said statement of facts have been submitted by me to counsel for defendant and are hereby approved and allowed.

R. L. PENN.
Judge 26th Judicial Dist. of Texas.

(Endorsed:) No. 17,138. District Court, Travis County. The State of Texas *vs.* Thos. O'Connor. Statement of Facts. Filed June 28", 1902. Jas. P. Hart, Clerk.

52 Bill of Exceptions No. 1.

Filed June 28th, 1902.

No. 17138.

District Court of Travis County, May Term, 1902.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

Be it remembered that on the trial of the above entitled cause the defendant offered in evidence a certified copy of a deed, with its certificates of acknowledgment and registration, all in the following words and figures, to-wit:

THE STATE OF TEXAS *County of Travis:*

Know all men by these presents, that we M. M. Murphy and Mary Murphy, his wife, of the County of Polk, State of Iowa, L. D. Craig and Nancy Craig, his wife, of the County of Audrian, State of Missouri, Elizabeth S. Mansfield and Robert Mansfield, her husband, Joshua H. Crawford, and C. Etta Crawford, his wife, and John M. Gordon and Bettie Gordon, his wife, Albert White, James D. Dillard and Sarah Ann Dillard, his wife, all of the County of Audrian and State of Missouri, P. D. Vandeventer and Elizabeth Vandeventer, his wife, of the County of Chariton, and D. W. Crowley and Ann M.

Crowley, his wife, of the City of St. Louis, and State of Missouri, all of said parties acting herein by and through Mortimer McIlhaney, of the County of Audrian and State of Missouri, their agent and attorney in fact, for and in consideration of the sum of twelve thousand seven hundred and eighty two dollars and fifty cents to us in hand paid by Arthur E. Sophn, of the County of Nueces (State of Texas, Henry Spohn of the County of Encinal, State of Texas, and Alex-
53 ander Hamilton of the County of Nueces, State of Texas, the receipt whereof is hereby acknowledged, have this day granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said Arthur E. Spohn, Henry Spohn and Alexander Hamilton all the right, title and interest, which we have or are possessed of and into fifty-one thousand one hundred and thirty acres of land out of the tract of land lying and being situated in the County of Webb and State of Texas and known as the grant from the Crown of Spain to Joaquin Galan, which grant embraces the two tracts known as "Palafox and Balconcitas" and is more fully described by metes and bounds as follows, to-wit: Beginning at a point on the Rio Grande river about thirty seven miles above the City of Laredo, said point being known as "El Rincon de Galan or Angostura, thence running N. 60° E. 48350 varas to a point known as "El Serrito Prieto;" thence N. 47° 30′ W. 28000 varas to a point known as "El Almud;" thence N. 0° 45′ E. 16,700 varas to a point known as "Los Pilloncillos;" thence S. 53° 30′ W. 34840 varas to a point known as Los Dos Hermanos; thence S 12° 30′ W. 26000 varas to the mouth of the Arroyo called "El Arroyo del Espada," where the latter joins the Rio Grande, thence down said river by its meanderings to the point of beginning, together with the appurtenances to our said interest belonging or in any wise incident or appertaining; our said interest in said fifty one thousand one hundred and thirty acres of land herein conveyed being as follows, to-wit: the interest herein conveyed by said Murphy and wife amounting to 1054½ acres, by said Craig and wife 5785 3-5 acres, by said Crawford and wife 5772 acres, by said Mansfield and wife 1420 4-5 acres, by said Gordon and wife 5772 acres, by said Mansfield and wife 1420 4-5 acres, by said Gordon and wife 2997 acres, by said Dillard and wife 5726 9/10 acres, by said
54 Albert White 6249 4/5 acres, by said Vandeventer and wife 2220 acres, by said Crowley and wife 1065 3/5 acres. To have and to hold the said above described fifty one thousand one hundred and thirty acres of land, together with all the appurtenances unto the said Arthur E. Spohn, Henry Spohn and Alexander Hamilton, their heirs and assigns forever. And we do hereby bind ourselves, our heirs and legal representatives, to warrant and defend the title to the above conveyed interests in said tract of land unto the said Arthur E. Spohn, Henry Spohn and Alexander Hamilton, their heirs and assigns forever.

In testimony whereof, we have hereunto set our hands and seals

(scrawls being used by way of seals) this 28th day of January A. D. 1881.

(Signed) M. M. MURPHY,
MARY MURPHY,
L. D. CRAIG,
NANCY CRAIG,
ELIZABETH S. MANSFIELD,
ROBERT MANSFIELD,
JOSHUA H. CRAWFORD,
C. ETTA CRAWFORD,
JOHN M. GORDON,
BETTIE GORDON,
JAMES D. DILLARD,
SARAH ANN DILLARD,
P. D. VANDEVENTER,
ELIZABETH VANDEVENTER,
D. W. CROWLEY,
ANN M. CROWLEY,
All by MORTIMER McILHANEY,
Their Agent and Attorney in Fact.

In presence of—
EDMUND J. DAVIS.
GARDNER RUGGLES.

THE STATE OF TEXAS, *County of Travis.*

Before me, a notary public in and for the county of Travis and State of Texas, on this day appeared M. M. Murphy and Mary V. Murphy, his wife, L. D. Craig and Nancy Craig, his wife, Robert Mansfield and E. S. Mansfield, his wife, Joshua H. Crawford and C. Etta Crawford, his wife, John M. Gordon and Bettie Gordon, his wife, James D. Dillard and Sarah A. Dillard, his wife, Albert
55 White, P. D. Vandeventer and Elizabeth Vandeventer, his wife, D. W. Crowley and Anna M. Crowley, all by Mortimer McIlhaney, their agent and attorney in fact, proved to me on the oath of Gardner Ruggles of Austin, Texas, to be the person whose name is subscribed to the foregoing instrument of writing, and acknowledged to me that they executed the foregoing instrument of writing for all the uses, purposes and considerations therein set forth and expressed.

Given under my hand and seal of office at Austin in the county and state first above written this 28th day of January A. D. 1881.

FLAVIUS EVERETT,
Notary Public, Travis Co., Texas.

THE STATE OF TEXAS, *County of Webb.*

I, W. H. Mowry, Clerk of the County Court of said county, do hereby certify that the above instrument of writing, with its certificate of authentication, was filed for record in my office this 9th day of February, A. D. 1881, at 1 o'clock P. M. and duly recorded on the

14th day of February, A. D. 1881, at 3 o'clock P. M. in the records of said county in book — Vol. 9, at pages Nos. 78-80.

Witness my hand and seal of said court at office in Laredo, Texas, the day and year last above written.

[L. S.] W. H. MOWRY,
Clerk Co. Court, W. C.

To the admission of which deed in evidence counsel for plaintiff objected for the following reasons, viz: that no power of attorney authorizing Mortimer McIlhaney as attorney in fact to execute said deed, or other authority for executing the same, has been shown, and that it does not appear apart from said deed itself that he
56 had any such power; and the court sustained the objections and counsel for defendant excepted to said ruling and herewith tenders his bill of exceptions and asks that the same be signed, sealed and made a part of the record in said cause, which is accordingly done.

R. L. PENN, *Judge.*

(Endorsed:) No. 17,138. District Court, Travis County. The State of Texas vs. Thomas O'Conor. Bill of Exceptions No. 1. Filed June 28, 1902. Jas. P. Hart, Clerk.

Bill of Exceptions No. 2.

Filed June 28th, 1902.

No. 17138.

District Court of Travis County, May Term, 1902.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

Be it remembered that on the trial of the above entitled cause the defendant offered in evidence a certified copy of a deed with its certificates of acknowledgment and registration, all in the following words and figures, to-wit:

THE STATE OF MISSOURI, *County of St. Louis.*

Know all men by these prseents that we M. M. Murphy and Mary V. Murphy, his wife, of the county of Polk and State of Iowa, Landon D. Craig and Nancy Craig, his wife, of the county of Audrian and State of Missouri, Elizabeth S. Mansfield and Robert Mansfield, her husband, Joshua H. Crawford and C. Etta Crawford, his wife, John M. Gordon and Bettie Gordon his wife, Albert White, James D. Dillard and Sarah Ann Dillard, his wife, all of the
57 county of Audrian and State of Missouri, P. D. Vandeventer and Elizabeth Vandeventer, his wife, of the county of Chari-

ton in the State of Missouri, D. W. Crowley and Anna M. Crowley, his wife, of the city of St. Louis, and State of Missouri, Thomas Chowning of the county of Monroe and State of Missouri, J. O. Richart and Sallie C. Richart, his wife, of the county of Montgomery in the State of Kentucky, all parties of the first part and all acting herein by and through Mortimer McIlhaney, of the County of Audrian in the State of Missouri, their agent and attorney in fact, for and in consideration of the sum of one thousand two hundred and ninety three dollars and twenty-five cents to us in hand paid by J. V. Spohn, of the county of Webb in the State of Texas, party of the second part, and a certain promissory note hereinafter mentioned, the receipt of which is hereby acknowledged, have this day granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said J. V. Spohn all right, title and interest which we have or are possessed of in and to Fifteen thousand and sixteen and eighty hundredths acres of land out of the tract of land lying and being situated in the county of Webb and State of Texas and known as the grant from the Crown of Spain to Joaquin Galan, which grant of land embraces two tracts known as Palafox and Balconcitas and is more fully described by metes and bounds as follows, to-wit: Beginning at a point on the Rio Grande river about thirty seven miles above the City of Laredo, said point being known as "El Rincon de Galan" or Angostura—thence running N. 60 E. 4835 varas to a point known as "El Serietto Prieto—thence N. 47° 30′ W. 700 varas to a point known as "El Almud"—thence N. — 45′ E. 16700 varas to a point known as "Los Piloncillos—thence S. 53° 30′ W. 34840 varas to a point known as "Los Dos Hermanos"—thence S. 12° 30′ W. 2600
58 varas to mouth of the arroyo, called "El Arroyo del Espana" where the latter joins the Rio Grande—thence down said river by its meanderings to the point of beginning, together with the appurtenances to our said interest belonging or in any wise incident or appertaining to our said interest in the said 15016 80/100 acres of land herein conveyed being as follows: the interest herein conveyed by Murphy and wife amounting to 133 acres; by the said Craig and wife 654 acres; by said Gordon and wife 378 acres; by said Dillard and wife 8879 80/100 acres; by said Albert White 1650 40 acres and by the said Vandeventer and wife 280 acres; by the said Crowley and wife 134 40/100 acres and by said Thomas Chowning and J. O. Richart and wife 2000 acres; to have and to hold the said above described interests in and to the above described 15016 80/100 acres of land together with the appurtenances, unto the said J. V. Spohn, his heirs and assigns forever. And we do hereby bind ourselves, our heirs and legal representatives, to warrant and defend the title to the above conveyed interests in said tract of land unto the said J. V. Spohn, his heirs and assigns forever. Subject nevertheless to a vendor's lien on the said land for the payment of a promissory note dated the 25th day of May, 1881, for the sum of Two Thousand five hundred and two dollars and seventy-five cents with interest at the rate of ten per cent. per annum and payable to the order of the said Mortimer McIlhaney one year

from the date thereof and made by the said J. V. Spohn for the balance of the purchase money for the land hereby conveyed.

In testimony whereof we have hereunto set our hands and seals (scrawls being used for seals) this 8th day of Nov. 1881.

(Signed) JOHN M. GORDON,
BETTIE GORDON,
ALBERT WHITE,
JAMES D. DILLARD,
SARAH ANN DILLARD,
P. D. VANDEVENTER,
ELIZABETH VANDEVENTER,
D. W. CROWLEY,
ANN M. CROWLEY,
J. O. RICHART,
SALLIE RICHART,
59 M. M. MURPHY,
MARY V. MURPHY,
LANDON D. CRAIG,
ELIZABETH S. MANSFIELD,
ROBERT MANSFIELD,
JOHN H. CRAWFORD,
C. ETTA CRAWFORD,
THOMAS CHOWNING.

By Their Agent and Attorney in Fact,
MORTIMER McILHANEY.

THE STATE OF MISSOURI, *County of St. Louis.*

Be it remembered that M. M. Murphy and Mary Murphy, his wife, Landon D. Craig and Nancy Craig, his wife, Elizabeth Mansfield and Robert Mansfield, her husband, Joshua H. Crawford, and C. Etta Crawford, his wife, John M. Gordon and Bettie Gordon, his wife, Albert White, James D. Dillard and Sarah Ann Dillard, his wife, D. W. Crowley and Ann M. Crowley, his wife, Thomas Chowning, J. O. Richart and Sallie C. Richart, his wife, all by Mortimer McIlhaney, their agent and attorney in fact, who is personally known to the undersigned Notary Public, duly qualified within and for the said County Court of St. Louis, to be the person whose name is subscribed to the foregoing instrument of writing and acknowledged to me that they executed the foregoing instrument of writing for all the uses, purposes and considerations therein set forth and expressed.

Given under my hand and official seal this 8th day of November, 1881.

(L. S.) P. A. GILBERT,
Notary Public.

THE STATE OF TEXAS, *County of Webb.*

I, W. H. Mowry, Clerk of the County Court of said County, do hereby certify that the above instrument of writing, with its certificate of authentication, was filed for record in my office this 28th

day of November, A. D. 1881, at 4 o'clock P. M. and duly
60 recorded the 30th day of November, A. D. 1881, at 2:30 o'clock P. M. in the records of said County in Book D. Vol. 10, on pages Nos. 126-7 and 8.

Witness my hand and the seal of said Court at office in Laredo, Texas, the day and year last above mentioned.

(L. S.) W. H. MOWRY,
Clerk Co. Court, W. C.

To the admission of which deed in evidence counsel for plaintiff objected for the following reasons, viz: that no power of attorney authorizing Mortimer McIlhaney, as attorney in fact to execute said deed or other authority for executing the same has been shown, and that it does not appear apart from said deed itself that he had any such power; and the court sustained the objections and counsel for defendant excepted to said ruling and herewith tenders his Bill of Exceptions and asks that the same be signed, sealed and made a part of the record in said cause, which is accordingly done.

R. L. PENN, *Judge.*

(Endorsed:) No. 17,138. District Court of Travis County. The State of Texas *vs.* Thomas O'Conor. Bill of Exceptions No. 2. Filed June 28, 1902. Jas. P. Hart, Clerk.

61 *Assignments of Error.*

Filed June 28th, 1902.

In the District Court of Travis County, Texas, May Term, 1902.

No. 17138.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

Now comes the defendant by his attorney and says that upon the trial of the above entitled and numbered cause the Court committed the following errors, to-wit:

(1.)

The court erred in sustaining plaintiff's exception to defendant's petition filed on the 5th day of October, 1901, praying for the transfer of this cause to the United States Circuit Court for the Western District of Texas, upon the ground that defendant was at the time this suit was begun, an alien and a subject of the United Kingdom of Great Brittain and Ireland, and a resident of the State of Tamaulipas in the Republic of Mexico, and that the matters in dispute in said suit exceeds the sum of two thousand dollars in value, exclusive of costs.

(2.)

The court erred in not sustaining defendant's plea of the jurisdiction of the court, filed May 5th, 1902, and alleging that the land, which is the subject matter of this suit, is situated in Webb County, State of Texas, and not in Travis County in said state.

(3.)

62 The court erred in sustaining the objections of plaintiff to the admission in evidence of the deed of M. M. Murphy and others by Mortimer McIlhaney, attorney in fact, to A. E. & H. Spohn and Alex. Hamilton, dated Jan. 28, 1881, and the deed from M. M. Murphy and others by Mortimer McIlhaney, attorney in fact, to J. V. Spohn, dated Jan. 11, 1881, because defendant showed peaceable and adverse possession of the lands conveyed by said deeds for more than twenty years, being a *bona fide* purchaser for a valuable consideration; the proof of which facts raising the presumption of the existence of a valid power of attorney to execute said deeds.

(4.)

The court erred in not rendering a final judgment for defendant because it was shown by the evidence that the defendant held the legal title to the premises in dispute by a regular chain of title emanating from the sovereignty of the soil.

(5.)

The court erred in not rendering a final judgment for the defendant because it was shown by the evidence that the plaintiff was estopped from claiming the premises in dispute by a valid judgment of the district court of Webb County, Texas, rendered and given on the 13th day of March, 1872; in a cause entitled Daniel Ruggles *vs.* The State of Texas; the same being a consolidation of two suits Nos. 11 and 14, on the docket of said court, brought for confirmation of title under the Act of the Legislature of the State of Texas, approved the 11th day of February, 1860, by which judgment the title to the premises in dispute was decreed, confirmed and vested in Joaquin Galan, his heirs and assigns.

(6.)

63 The court erred in not rendering final judgment for defendant because it was shown by the evidence that the plaintiff was estopped from claiming the premises in dispute, by permitting said judgment of the district court of Webb County of the 13th day of March, 1872, confirming the title to said premises in and to Joaquin Galan, his heirs and assigns, to remain of record in Webb County, as a valid judgment, and as notice to all the world of the final adjudication of said title without ever prosecuting any appeal therefrom or taking any action to vacate or annul the same.

(7.)

The court erred in not rendering final judgment for defendant because it was shown by the evidence that plaintiff was estopped from claiming the premises in dispute, by the issuance of Letters Patent No. 370, Vol. 25, by C. A. Culberson, Governor of the State of Texas, on the 4th day of October, 1898, and by the issuance of Letters Patent No. 514, Vol. 24, by L. S. Ross, Governor of said state, on the 8th day of July, 1887; both of which patents purport to have been issued by virtue of said judgment of the district court of Webb County of the 13th day of March, 1872; by all of which the plaintiff recognized the validity of said judgment and gave notice to the world of the validity of the same under her seal of State.

(8.)

The court erred in not rendering final judgment for defendant as it was shown by the evidence that plaintiff was barred and estopped in law and equity from prosecuting this suit, the same being a state demand, because defendant and those under whom he claims, had held adverse and peaceable possession (interrupted only by hostile Indians) of the premises in dispute, claiming the same under
64 a regular chain of title emanating from the sovereignty of the soil, for more than one hundred years next before the commencement of this suit; and because the defendant himself had held adverse and peaceable possession of said premises for more than twenty years next before the commencement of this suit, having paid in good faith a valuable consideration for the same, without notice of any claim thereto by plaintiff and having paid plaintiff all the State taxes assessed against the same for said period.

(9.)

The court erred in not rendering a final judgment for defendant because the evidence showed that plaintiff ratified, confirmed and validated said judgment of the district court of Webb County of the 13th day of March, 1872, and directed the issuance of a patent for the land described therein by an Act of the Legislature of the State of Texas approved on the 4th day of April, 1881, entitled An Act to authorize and require the issue of patents to land situated between the Rio Grande and Nueces rivers the titles to which have been confirmed under the Act of February 11th, 1860.

(10.)

The court erred in not rendering a final judgment for defendant because the evidence showed that if the title to the premises in dispute was not in defendant, then it was outstanding and vested in the citizens of the ancient town of Palafox or their heirs and assigns and was not in the State of Texas.

(11.)

The court erred in rendering final judgment for plaintiff because the judgment of the district court of Webb County, Texas, rendered

on the 8th day of January, 1862, in the cause entitled Daniel Ruggles *vs.* The State of Texas, upon which plaintiff relied for
65 title, shows on its face that the land in dispute is titled land, in and to which the plaintiff has not, nor has ever had, any right, title or interest.

H. G. DICKINSON,
Attorney for Defendant, Thomas O'Conor.

(Endorsed:) No. 17,138. The State of Texas *vs.* Thomas O'Conor. Assignments of error. Filed June 28th, 1902. Jas. P Hart, Clerk. By E. Huppertz, Deputy.

Appeal Bond.

Filed June 28th, 1902.

No. 17138.

In the District Court of Travis County, State of Texas, May Term, 1902.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

Whereas, in the above numbered and entitled cause, pending in the District Court of Travis County, State of Texas, and at a regular term of said court, to-wit: on the 20th day of June, 1902, the said plaintiff, The State of Texas, recovered a judgment against the said defendant, Thomas O'Conor, the same being the final judgment rendered by said court in cause No. 17,138 aforesaid which was submitted to the court on the 7th day of May, 1902, and taken under advisement by the court until the 20th day of June, 1902, when said judgment was rendered, by which the plaintiff, The State of Texas, recovered of and from the defendant, Thomas O'Conor, the following described certain tract of — situated in the county of Webb in the State of Texas about 37 miles North 37° West from the town of Laredo and which said land is more particularly described as
66 follows, to-wit: Beginning at a pile of rock on the East bank of the Rio Grande river at the mouth of San Pedro creek an old corner; thence North 47° East 15088 varas to a corner; thence North 70° East 4152 varas; thence South 20° East 7359 varas; thence South 70° West 18420 varas a corner on the North bank of the Rio Grande river; thence up said — with the meanderings to the place of beginning, containing 19,410 13/100 acres. Said judgment further decreeing that any title of the said defendant, Thomas O'Conor, in the said land be canceled, set aside and annul-ed, and that all cloud to plaintiff's title in and to said land be removed and plaintiff's title in and to said land be and the same is forever established and quieted and that plaintiff have writ of possession and recover of de-

fendant all costs of suit, for which execution may issue; from which judgment the said Thomas O'Conor has taken an appeal to our Court of Civil Appeals 3d Supreme Judicial District of the State of Texas.

Now, therefore, we the said Thomas O'Conor as principal, and P. J. Macmahon, J. H. Murphy and H. G. Dickinson, as sureties, acknowledge ourselves bound to pay to the State of Texas the sum — Five hundred dollars, conditioned that the said defendant, Thomas O'Conor, shall prosecute his appeal with effect and pay all the costs which have accrued in the court below and which may accrue in the Court of Civil Appeals and the Supreme Court.

Witness our hands this 24th day of June, 1902.

THOS. O'CONOR.
P. J. MACMAHON.
J. H. MURPHY.
H. G. DICKINSON.

Approved June 28", 1902.
JAS. P. HART, *Clerk.*

67 (Endorsed:) No. 17,138. The State of Texas *vs.* Thomas O'Conor. Appeal Bond. Filed June 28, 1902. Jas. P. Hart, Clerk.

Bill of Costs.

No. 17138.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

To Officers of Court, Dr.

Clerk's costs:	Dolls.	Cts.
Docketing Suit		20
Issuing Citation & Duplicate &c	1	75
" Notice & Duplicate &c	1	75
Issuing Copy Petition & Certificate	2	50
" " " to Remove	1	00
" " Suppl. Petition		75
" " Notices, Precepts &c	4	50
Entering Appearances		30
" Continuances		40
" Orders	1	50
Filing Papers	6	15
Entering Judgment	1	50
Issuing Copies Ints. & Notice	6	35
" " " " Commissions	10	35
Opening & Filing Depositions		45
Approving Bonds, 2	3	00
Assessing Damages		50
Clerk's Costs forward	$42	95

68

Brought forward	42 95
Transcript	35 00
Filing & Certifying Brief	90
Taxing Costs	25
Total Clerk's Costs	$79 10

Sheriff's & Miscellaneous Costs:	Dolls. Cts.
J. M. Davis, Sheriff:	
Precepts & Mileage	3 75
Venire fee	50
A. Winslow, N. P.: 3 sets Depositions (estimated)	4 50
Service Notice (estimated)	1 50
Total Sheriff's & Miscellaneous Costs	$10 25

Recapitulation.

Clerk's Costs	$79 10
Sheriff's & Miscellaneous Costs	10 25
Total	$89 35

69–70 *Clerk's Certificate.*

THE STATE OF TEXAS, *County of Travis.*

I, Jas. P. Hart, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify that the within and foregoing on 68 pages is a true and correct transcript of all the proceedings had in this Court in cause No. 17,138, of the State of Texas *vs.* Thomas O'Connor, as the same appear of record and on file in this office.

Given under my hand and seal of office, at Austin, Texas, this the 12th day of July, A. D. 1902.

[SEAL.]

JAS. P. HART,
Clerk District Court, Travis County, Texas.

71 Endorsed: No. 2944. Thomas O'Connor, Appellant *vs.* State of Texas, Appellee. From the District Court of Travis County for the 26th Judicial District of Texas. Applied for by H. G. Dickinson, attorney for appellant on the 11th day of July, A. D. 1902, and delivered to the above named attorney on the 11th day of July, A. D. 1902. Jas. P. Hart, Clerk of the District Court of Travis County. Filed in Court of Civil Appeals 3rd Supreme Judicial District, Austin, Texas, Sep. 19, 1902, R. H. Connerly, Clerk. Rev. and Rendered for appellant, 11/19/02. Overruled, 12/24/02. No. 1193, The State of Texas *vs.* Thos. O'Conor. Filed in Supreme Court of Texas, February 25, 1903, F. T. Connerly, Clerk, by J. S. Myrick Deputy. May 4, 1903. Judgment of Court of Civil Appeals reversed and judgment of District Court affirmed. Motion for Rehearing overruled, June 8, 1903.

72 PROCEEDINGS IN THE COURT OF CIVIL APPEALS, THIRD SUPREME JUDICIAL DISTRICT, AT AUSTIN.

Opinion of the Court of Civil Appeals.

Filed No. 19, 1902.

No. 2944.

THOMAS O'CONNOR, Appellant,
vs.
THE STATE OF TEXAS, Appellee.

Appealed from the District Court of Travis County.

Opinion.

The State, acting through the Attorney General, brought this suit in trespass to try title to 19,410 acres of land. There was a non-jury trial resulting in a judgment for the State for the land, and the defendant has appealed.

1.—The first question for decision arises out of the ruling of the trial court in sustaining an exception to the defendant's petition for removal of the suit to the Federal Court. The petition for removal was based upon the fact that the defendant was a non-resident citizen of the United Kingdom of Great Britain and Ireland.

Section 639 of the Revised Statutes of the United States regulating the removal of suits to the Federal Courts, authorizes such removal when the suit is against an alien; and it was held in The State of Texas *vs.* Lewis, 12 Fed. Rep., 1, and 14 Fed. Rep., 65, that, although the plaintiff was a state, the defendant being an alien, was entitled to have the cause removed to the federal court under the section of the statute referred to; and if that statute remained unchanged we might make the same ruling. But in 1888, Congress passed a new removal statute, complete within itself, which does not author-
73 ize removal on account of alienage of the defendant, except when the plaintiff is a citizen of a state. Therefore, unless it be proper to hold that a state is a citizen, within the meaning of the act of 1888, the right of removal does not exist in this case.

A state is "a political community, organized under a distinct government, recognized and conformed to by the people as supreme; a commonwealth; a nation." A citizen is "a member of a nation or sovereign state, especially of a republic; one who owes allegiance to a government and is entitled to protection from it." (Standard Dictionary.)

There is nothing in the statute under consideration to indicate that the words "state" and "citizen," when used therein, were intended to have other than their ordinary signification; and, as they are in no wise synonimous terms, the logical conclusion is that the term "citizen," as used in the provision of the statute conferring

Federal jurisdiction and the right of removal when the suit involves "a controversy between citizens of a state and foreign states, citizens or subjects," has reference to the various persons who compose the members and citizenship of the several states of the Union, and not to the states themselves. Hence we hold that the right of removal to the Federal Court did not exist in this case, and the court below ruled correctly on that point.

2.—The ninth assignment of error raises a question which, if decided in appellant's favor, is conclusive of the controversy; and that question will now be considered.

The facts upon which the merits of the case rest are concisely stated in the brief of the Attorney General, as follows:

"The evidence established the fact that under the law of 1860 Daniel Ruggles instituted two suits in the district court of Webb County for the confirmation of the title to two large tracts of land,
one of which is designated as the Palafox tract, and the
74 other as the Balconcitas tract. The suit for the confirmation of the Palafox tract came to trial on the 8th day of January, 1862, and resulted in a judgment in favor of Ruggles for the confirmation of the title to a large tract of land, the southwestern boundary of which was six leagues of 5000 varas each from the western bank of the Rio Grande river and parallel with it. In 1869, a motion was filed by Ruggles, seeking a construction and modification of the decree of the 8th of January, 1862, but it was overruled. In 1871 the other suit, the one for the Balconcitas tract, was dismissed by the court for the want of jurisdiction. In 1871 Ruggles made a motion to re-docket the two cases, which was granted; and at the same time, he filed a petition in which he sought to have the decree of 1862 set aside, and have a confirmation of the title to both the Palafox and Balconcitas tracts, but on the 8th day of March, 1872, these motions were refused. On March 12th, 1872, Ruggles filed in the same court another petition, seeking to set aside the decree of the 8th of January, 1862. The court set aside the decree and consolidated the motions. On the 13th of March, 1872, Ruggles filed an amended petition, in which he sought a confirmation of the title to both tracts, and upon which judgment was rendered in favor of Ruggles on the 13th of March, 1872.

"The land which was covered by the decree of confirmation of 1862, was patented to Ruggles, and the state has not, in any way, questioned the validity of that judgment or of the title of those claiming under Ruggles, to the land. The land sued for in this case is located entirely on that portion of the land which the court in its decree of 1862 declined to confirm in favor of Ruggles, but is included within that which purports to have been confirmed to him by the decree of March 13th, 1872; hence the only question on this appeal, as we contend, upon the merits, is as to the validity of the judgment of the district court of Webb County, rendered on the 13th day of March, 1872."

75 In support of the proposition that the judgment of March 13, 1872, is null and void, the Attorney General cites and

relies upon the opinion of the supreme court in Texas Mexican Railway Co. *vs.* Jarvis, 80 Tex., 456.

In support of the validity of that judgment, counsel for appellant contends, among other things, that, if originally invalid, it was validated by an act of the Seventeenth Legislature, passed April 4, 1881; and the construction of that act is the question raised by the ninth assignment of error. Omitting the title and emergency clauses, which afford no aid in construing it, the act reads thus:

"SECTION 1. Be it enacted by the legislature of the State of Texas that whereas many suits to confirm land titles for land between the Nueces and Rio Grande rivers were brought within three years from and after the passage of the act of February 11th, 1860, and in compliance with the terms thereof, but owing to the war and other causes, were not finally adjudicated until after such three years had expired; and whereas, the Commissioner of the General Land Office has refused to issue patents for titles not confirmed within such three years; and whereas, it is just and equitable that parties who in good faith and diligence, have attempted to comply with the terms of said act, should receive the full benefit thereof; therefore, the Commissioner of the General Land Office is hereby authorized and required to issue patents to all lands between said rivers when suits to establish title to same under said act have been commenced within three years from the passage of the same, and when the proper district court has finally confirmed such titles."

In Railway Co. *vs.* Jarvis, 80 Tex., 456, while not necessary to the decision of that case, our supreme court held, that by its own terms, the life of the act of February 11th, 1860, authorizing suits to be brought against the state in the district court of Webb County,
76 was limited to three years, which by amendment passed January 11th, 1862, was extended two years longer; and that the entire act ceased to exist after February 11th, 1865; and therefore, the district court of Webb County was without jurisdiction and power to render the judgment involved in this case, of date March 13, 1872; and that at that time the district court of Travis County had exclusive jurisdiction of such cases, by virtue of an act passed August 15th, 1870, re-enacting the act of February 11th, 1860, except that it required the suits to be brought in the district court of Travis County. But, while the act of April 4, 1881, was cited by counsel for appellee in that case, it is not referred to in the opinion; and, as its construction either way would not have changed the result reached by the supreme court, we do not think that case should be regarded as deciding that the judgment of March 13, 1872, was not validated by the act referred to. The real point decided by the supreme court in that case was this: Conceding the invalidity of the decree of March 13, 1872, nevertheless, the appellant in that case was not entitled to the relief sought. So, if the supreme court had held that the act of 1881 validated that decree, such holding would not have changed the result, but would have furnished an additional reason for the decision rendered.

Hence it is believed to be the duty of this court to construe the act of April 4, 1881, and determine whether it embraces and validates

the decree of March 13, 1872; and we have addressed ourselves to that task, and a majority of the court have reached the conclusion that it does. But before analysing the statute, it may not be amiss to refer to some of the rules applicable to the construction of statutes.

In the first place, it is part of the statutory law of this state "that the rule of the common law that statutes in derogation thereof
77 shall be strictly construed shall have no application to the Revised Statutes * * * and the provisions thereof shall be liberally construed, with a view to effect their objects and promote justice." (Sec. 3, Genl. Prov. Rev. Stat.) Strictly speaking, it may be true that the act of April 4, 1881, is not any part of the Revised Statutes; but we believe the statutory rule quoted should itself be liberally construed and held applicable to all statutory law not penal in character.

Furthermore, the act of 1881 is a remedial statute; and, for that reason, is entitled to a liberal construction. We say that it is a remedial statute because it recites the fact that many persons had brought suits under the act of February 11th, 1860, to confirm titles to their lands, which owing to war and other causes, were not finally adjudicated within the time prescribed by the act; that the Commissioner of the General Land Office had refused to issue patents for titles not confirmed within that period; that it was just and equitable that parties who in good faith and diligence had attempted to compiy with the terms of said act should receive the full benefit thereof. And the Legislature then proceeds to grant all the relief that would have been obtained by strict compliance with the act of February 11th, 1860, to such persons as brought their suits within three years from the passage of that act, and obtained final confirmation of their titles by the proper court. In other words, the act of 1881 indicates upon its face that, for reasons beyond their control, many persons who had attempted to secure the benefits of the act of February 11th, 1860, had been unable to do so within the time prescribed by the Act, as construed by the Commissioner of the General Land Office, and that hardship and injustice would result to such parties unless relief was granted by the Legislature, and it was to remedy the condition and prevent the hardship and injustice referred to, that the statute of 1881 was enacted; and, therefore, it was remedial legislation.
78 A standard authority announces the general rule for the construction of remedial statutes thus:

"Remedial statutes are made to supply defects or abridge superfluities in the law; and the rule is that they are to be construed liberally for the suppression of the mischief and the advancement of the remedy. In construing such statutes, the old law, the mischief and the remedy must be kept in mind; and, within the limits of the modern rule just examined, that which is within the mischief intended to be remedied is considered within the statute though not within the letter, and, that which is not within the mischief is not considered within the statute, though within the letter." (23 Am. & Eng. Ency. Law, p. 414.)

Another text writer states the rule in these words: "The courts construe remedial statutes most liberally to effectuate the remedy.

This principle operates to exclude as well as to include cases in furtherance of the law-makers' intention. That which is not in the purpose or meaning, nor within the mischief to be remedied, is not included in the statute, even though it be within the letter. The courts follow the reason and spirit of such statutes till they overtake and destroy the mischief which the Legislature intended to suppress. In doing so, they often go quite beyond the letter of the statute. What is within the intention is within the statute though not within the letter; and what is within the letter but not within the intention is not within the statute." (Suth. On Stat. Const. Sec. 411.)

The books quoted cite many cases in support of the respective texts, but we shall content ourselves by referring to a few cases emanating from the highest court of this state, and some of which apply to the rule of liberal construction to statutes not strictly remedial. In Nichols *vs.* Stewart, 15 Tex., 227, the court was called upon to construe an act of Congress validating former marriages by bond then supposed to have been illegal, one provision of which declared that in cases where persons had intermarried agreeably to the cus-
79 toms of the country, and either husband or wife had died previous to the passage of the law and were living together at the time of the death of such spouse, such marriages should be legal, and the issue of the same legitimate. In construing that provision, the court said:

"A strict, literal construction of the act of congress above cited would, perhaps, limit the legitimatizing of the children of such as were born after the execution of the marriage bond; but that would not seem to be within the spirit and object of the law. It was designed to legalize marriages or associations of that kind, and to put it upon the same footing as if married with the legal sanction of the church. The consequences of a legal marriage at that time would have been to make children, the issue (acknowledged by the father) of the parties born before wedlock, legal heirs. This was the Spanish law and Mexican law at the time the marriage bond was executed." (See also Brooks *vs.* Hicks, 20 Tex., 666; Jones *vs.* Jones, 60 Tex., 455; Railway Co. *vs.* Tod, 94 Tex., 633.)

Notwithstanding the rule referred to and the authorities cited, it is not denied that the burden rested upon appellant, who deraigns title from Daniel Ruggles, to show that Ruggles belonged to the class intended to be benefited by the act of April 4, 1881; but, giving to that act a fair and reasonable construction, we believe appellant fully discharged that burden.

Now let us analyse the statute, deduce from its context and language the legislative purpose, and see if the claim asserted by Ruggles under the decree of March 13, 1872, falls within the class of claims intended to be confirmed and validated. It will be observed that this statute undertakes to and does assign reasons for its enactment; and while the reasons assigned may aid in construing the law enacted, they afford no ground for excluding therefrom any person or claim reasonably within the law that was enacted. And
80 what was that law? The Legislature used these words to express and enact it: "Therefore, the commissioner of the

general land office is hereby authorized and required to issue patents to all lands between said rivers, when suits to establish title to same under said act have been commenced within three years from the passage of same, and when the proper district court has finally confirmed such titles." Of course, the rivers there referred to were the Nueces and Rio Grande, and the act referred to was that of February 11th, 1860, previously mentioned in the act of 1881.

It is submitted that the language quoted is the essence and life of the act of 1881; and that the only burden resting upon appellant, to obtain its benefit and protection as assignee of Ruggles, was to show:

1.—That Ruggles commenced suit for confirmation of his title in the district court of Webb County within three years after February, 11th, 1860.

2.—That thereafter, said court tried the cause and rendered and entered upon its minutes a decree confirming Ruggles's title; and

3.—That the land in controversy is part of the land embraced in the confirmatory decree referred to.

Now what are the facts? The Attorney General admits (1) that Ruggles brought this suit in the district court of Webb County, and within the proper time; (2) that on the 13th day of March, 1872, that court went through the form of trying the case, and entred upon its minutes a decree confirming Ruggles's title to a large body of land; and (3) that the land in controversy is a portion thereof.

Do not these facts parallel with and dovetail into the act of 1881, so as to render it reasonably certain that Ruggles's claim under the decree of March 13, 1872, is one of those intended to be confirmed by that act?

81 It is true, the act uses the language, "when the proper district court has finally confirmed such titles;" and it may be conceded that at that time the district court of Webb County had no jurisdiction to try the case, confirm the title or render any character of judgment. But we submit that when the Legislature used the expression, "proper district court," it did not mean thereby a court having jurisdiction and authority to act; because confirmation by such a court would have been legal, and validating legislation unnecessary. Did the Legislature mean the district court of Travis County, and not the district court of Webb County, because, by the act of 1870, jurisdiction of such cases had been conferred upon the former court? We think not. If there had been any law authorizing it, and a case had been legally transferred from the district court of Webb County to the district court of Travis County, then a decree of confirmation by the latter court would have been legal, and required no validating legislation. And if a case originating in the district court of Webb County under the act of 1860, was, without authority of law, transferred to the district court of Travis County, then the latter was no more the "proper district court" to try the case and render judgment than was the former.

It is difficult to see why the phrase referred to should be held to apply more appropriately to a court that never had jurisdiction, than to one that once had and had lost it. On the contrary while the

expression, "proper district court," is not a very apt description of either court, it is believed that, as used in the act of April 4, 1881, it means the district court in which the suit was originally and properly commenced, which was the district court of Webb County.

But in 1862, while the district court of Webb County had jurisdiction, it tried one of the cases and rendered judgment against Ruggles for a portion of the land there involved, including
82 the land in controversy in this case; and it becomes necessary to determine what effect, if any, that fact has on the question under consideration.

As a matter of fact, one of the original cases which formed the consolidated cause in which the judgment of March 13th, 1872, was rendered, had never been tried before, and to that extent, that judgment was undoubtedly the only as well as the final adjudication. But, in our opinion, as to all the land,—that covered by the decree of January 8, 1862, as well as the rest—the decree of March 13, 1872, was the final adjudication referred to by the act of 1881. It is no argument against the conclusion to say that long prior to 1872 the court had already tried the case; and, therefore, had no authority at another term of court, and after the law conferring jurisdiction had been repealed, to set aside the former decree and try the case again. The act of 1881 was intended to cure defects; it indicates that the Commissioner of the Land Office had placed the same construction on the act of 1860 that the supreme court subsequently did, and had refsued to issue patents because decrees relied on were rendered too late, and, therefor, were void. It is immaterial what may have been done before and in compliance with law, because by the act of 1881, the Legislature undertook to deal with and vitalize that which was done too late and not in compliance with law; and it is of no consequence that the latter, when vitalized, results in changing the former. The purpose of the Legislature, as indicated by the language used, was to ratify and validate—not what the proper court had first done, or lawfully done—but that which it had finally and unlawfully done.

If it be contended that if the act of February 11, 1860, had remained in force until after March 13, 1872, still the district court of Webb County would have been without jurisdiction to set aside the decree of January 8, 1862, and render the one of March 13, 1872; and that it was not the purpose of the Legislature in
83 passing the act of 1881 to place any one in a better position than he would have occupied had the act of 1860 remained in force, the reply is that we are not prepared to yield assent to either proposition. Although the court had tried the case and rendered judgment at a former term, if the act of 1860 had remained in force, it is by no means certain that the court would not have had equitable jurisdiction of a bill of review to set aside the former judgment. And the record indicates that it was that character of relief that the court attempted to grant. But if it be conceded, that had the act of 1860 remained in force the order setting aside the former judgment, and the decree rendered March 13, 1872, would, nvertheless, have been void, still, we are of the opinion that the act of 1881 would apply

and relieve against those defects. Such defects, as well as those resulting from a failure to get a case tried for the first time within the time prescribed by the act of 1860 relate to the same matter, failure to procure the final action that ultimately was procured in proper time. And the act of 1881 is broad enough to embrace all cases in which suits were brought in proper time and confirmatory decrees were finally rendered, regardless of the date and validity of the latter and of what may or may not have been done in the intervening time.

Furthermore, the preamble or explanatory portion of the act of April 4, 1881, recites the fact that intended beneficiaries of that act had been prevented by the war and other causes from procuring final adjudication of their suits within the time prescribed by the act of February 11th, 1860; and the order of the district court of Webb County setting aside the decree of January 8th, 1862, which was made the day before the decree of March 13th, 1872, was rendered, recites the fact that Ruggles was prevented by the war from presenting his cause properly at the time the former decree was rendered. That recital was part of a public record in the territory affected by the acts of 1860 and 1881; and it, and the further
84 fact that the two suits brought by Ruggles, which were finally consolidated, involved about 300,000 acres of land, are circumstances tending to show that at the time the act of 1881 was passed, the Legislature had in mind the claim asserted by Ruggles under the decree of March 13, 1872, and intended that act to apply to all such cases.

We have not undertaken to decide whether the decree of 1872 and the act of 1881 vest legal or equitable title in Galan and his assignees, nor whether appellant connected himself with the Galan title; because we understand the Attorney General to admit that if the decree of 1872 is valid, either on account of legislative confirmation or for any other reason, then the state has no case. And, having decided against the state on that point, the judgment of the court below will be reversed and judgment here rendered for appellant.

Reversed and rendered.

W. M. KEY,
Associate Justice.

Endorsed: No. 2944. Thomas O'Conor, Appellant, *vs.* The State of Texas, Appellee. Appeal from Travis County. Reversed and Rendered. Key, Associate Justice. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, Nov. 19, 1902. R. H. Connerly, Clerk. With App. No. 3611. Filed in Supreme Court, Jan. 2, 1903. F. T. Connerly, Clerk.

85 *Judgment of Court of Civil Appeals.*

Rendered Nov. 19, 1902.

No. 2944.

THOMAS O'CONNOR
vs.
THE STATE OF TEXAS.

Appeal from District Court of Travis County.

Opinion by Associate Justice Key.

This cause came on to be heard on the transcript of the record, and, the same being inspected, because it is the opinion of the court that there was error in the judgment: It is therefore considered, adjudged and ordered that the judgment of the Court below be reversed: And this court now proceeding to render such judgment as should have been rendered by the court below; it is therefore further considered, ordered, adjudged and decreed that the appellee, The State of Texas, take nothing by its suit against the appellant, Thomas O'Connor, but that he go hence and recover of and from the appellee, The State of Texas, all costs in this behalf expended, both in this court and in the court below and that this decision be certified below for observance.

Motion for Rehearing.

Filed November 27th, 1902.

In the Court of Civil Appeals, Third Supreme Judicial District.

No. 2944.

THOMAS O'CONNOR, Appellant,
vs.
THE STATE OF TEXAS, Appellee.

To the Honorable Judges of said Court:

Now comes the State of Texas, appellee in the above entitled cause and represents *represents* and shows to the court that there was and is error in the action of the court in reversing the judgment and decision of the trial court and in rendering judgment against
86 the appellee and in favor of appellant, for the following reasons to-wit:

First: The court erred in holding that the act of the legislature of the State of Texas of April 4th, 1881, validated or in any wise affected the void judgment of the district court of Webb county, rendered on the 13th day of March, 1872.

Second: The court erred in holding that the trial court had committed error in rendering judgment for appellee, the State of Texas, and against the appellant because the undisputed evidence in the case showed that the district court of Webb county, at a time when it had jurisdiction and authority to pass upon the question, to-wit, on the 8th day of January, 1862, had rendered a judgment in the case of Ruggles vs. The State of Texas, in which it adjudicated that Ruggles, from whom the appellant O'Connor, dereigns title, did not have a valid claim to the land which was the subject matter of the litigation in this case, and that the same belonged to the State of Texas.

Third. The court erred in holding that the trial court had committed an error in rendering judgment for appellee and against appellant, because the judgment of the 8th of January, 1862, never having been appealed from or otherwise legally vacated, was and still is binding upon Ruggles and those who claim title under him. The court which rendered the judgment of January 8th, 1862, having adjourned, lost all control or jurisdiction over the case, and said judgment not having been reversed by an appellate court on writ of error or appeal, the same still remains a final judgment.

Fourth: The Act of February 11th, 1860, as amended by the Act of January 11th, 1862, having expired by its own limitation, the district court of Webb county had no authority or jurisdiction after the 11th day of January 1865, to act upon or in any wise affect the judgment which had been previously entered in said court. The attempted action of the district court of Webb county which resulted in what purports to be the judgment of March 13, 1872, was,
87 if anything, an independent suit, and was instituted at a time long after the district court of Webb county had ceased to have any authority or jurisdiction to entertain a suit of the character which it purported to be.

Fifth: The court erred in holding that the trial court committed an error in holding that the act of April 4th, 1881, did not validate the judgment of March 13th, 1872, because said purported judgment of March 13th, 1872, was not a judgment of a proper district court. The act of August 15th, 1870 was at that time in full force and effect, and that act conferred upon the district court of Travis county exclusive jurisdiction to hear and determine suits brought for the purpose of confirming titles of the character which it is claimed the title which it sought to have confirmed was. The purported suit, which resulted in the judgment of March 13, 1872, was an independent action, if any thing at all, and was instituted in a court which had no jurisdiction over the subject matter attempted to be litigated.

The act of 1881 was intended to validate judgments only when the suits to establish the title had been commenced within three years from the passage of the act of February 11, 1860. If there had been an irregularity in the judgment of 1862, on account of which the judgment * * * would have been void, the act of 1881, would have validated the judgment; but the judgment of 1872 was rendered in a case which was instituted long after the expiration of three years from the passage of the act of 1860.

Sixth: The court erred in holding that the judgment of March 13th, 1872, was validated by the act of 1881. The act of 1881 only attempted to validate the judgments which were irregular and void on account of the fact that they were rendered after February 11th 1865. The judgment of March 13th 1872, was void on other grounds. The proceedings themselves show that no notice
88 or citation of any kind was had in the suit which resulted in the judgment of March 13th, 1872, upon the Attorney General of the State of Texas, or upon any other person upon whom service was authorized to be had. The district attorney had no authority to appear for the State of Texas, and the judgment, therefore, shows on its face to be an absolute nullity.

Seventh: The court erred in failing to affirm the judgment appealed from in this case because the undisputed evidence showed that appellee was entitled to the judgment which was rendered in its favor.

Appellee alleges that H. G. Dickinson who resides in Webb county, Texas, is attorney for appellant herein; and appellee prays that the clerk of this court issue a precept directed to the sheriff of Webb county, commanding him to deliver a copy of this motion to said H. G. Dickinson.

Appellee prays that this court set aside the judgment heretofore rendered reversing and rendering this case; that a rehearing be granted, and that the judgment of the lower court in favor of appellee be affirmed; and for all other and further relief to which appellee may be entitled.

C. K. BELL,
Attorney General, Attorney for Appellee.

Endorsed: No. 2944. Thomas O'Connor, Appellant, vs. The State of Texas, Appellee. Motion for rehearing by Appellee. Filed in Court of Civil Appeals, 3rd Supreme Judicial District, Austin, Texas, November, 1902. R. H. Connerly, Clerk. Filed in the Supreme Court of Texas, January 2nd, 1903. F. T. Connerly, Clerk.

89 *Order Overruling Motion for Rehearing.*

December 24th, 1902.

No. 2944.

THOMAS O'CONNOR
vs.
THE STATE OF TEXAS.

Motion 1492.

Appeal from Travis County.

Motion for a rehearing; the motion is overruled.

PROCEEDINGS IN THE SUPREME COURT OF TEXAS.

Petition for Writ of Error.

Filed Jan. 2, 1903.

In the Supreme Court of Texas.

THE STATE OF TEXAS, Plaintiff in Error,
vs.
THOS. O'CONNOR, Defendant in Error.

Petition for Writ of Error.

To the Honorable Supreme Court of the State of Texas:

The State of Texas, appearing herein by C. K. Bell, Attorney General, applying for a writ of error to the Honorable Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, for the removal of this cause from said court into this honorable court, respectfully represents:

That this is one of a series of suits instituted on the 5th day of July, 1901, by the State of Texas for the purpose of recovering the possession of and the adjudication of the title to certain tracts of land situated in Webb county in the State of Texas.

The trial in the district court resulted in a judgment in favor of the State, and the defendant O'Connor appealed to the Court of Civil Appeals, by which court the judgment of the district court was reversed and a judgment rendered in favor of appellee. A motion for rehearing was filed and was overruled by the Court of Civil
90 Appeals on the 24th day of December, 1902.

Statement.

In the year 1860, Daniel Ruggles, claiming through Joaquin Galan, brought an action, being Number 14 in the district court of Webb county for confirmation of title under the Act of February 11th, 1860. The case came to trial January 8th, 1862, and resulted in an adjudication that at some time prior to the year 1804, the Government of Spain granted to "Joaquin Galan a certain large tract of land situated on the East bank of the Rio Grande in this (now Webb) county about forty miles above the town of Laredo, embraced within the following boundaries, viz: Beginning at a well known place called Rincon de Galan or the Angostura, on the Eastern bank of the Rio Grande, said point being a small distance below the ancient town of Palafox; running from thence a straight line northeasterly to a well known point called the Cerrito Prieto, being a prominent solitary eminence; thence in a westerly direction to a well known point called Almudes, that being also a solitary hill or eminence; thence in a southerly direction to the bank of the Rio Grande in a straight line to a noted point called Arroyo de San Pedro where

the same empties into the Rio Grande in the center of the same; thence down said river to the starting point; these said noted points forming all the ancient points or landmarks and boundaries of said tract."

The judgment recites among other things, the following facts:

"That it appeared to the court by original authentic documents that in the year 1805 said Joaquin Galan sold the said tract of land to Manuel Garza, who settled upon the same and occupied it for many years, and that about the year 1810, the Government of Spain being desirous of forming a town on the river bank where the said Manuel Garza had planted his rancho, the said government did then and there condemn and take from the said Manuel Garza for the use of
91 the government all that part of said tract lying and fronting on the Rio Grande to the depth of six Mexican leagues, and did then and there lay out and establish the town of Palafox on the eastern bank of the Rio Grande with the ejidos extending across the same, and gave and donated the lands above and below the said town to the settlers of the same in the form and shape of porciones running back the depth of six Mexican leagues, or thirty thousand varas, and that for said condemnation the said Manuel Garza was reimbursed in land lying above the town and jurisdiction of Palafox."

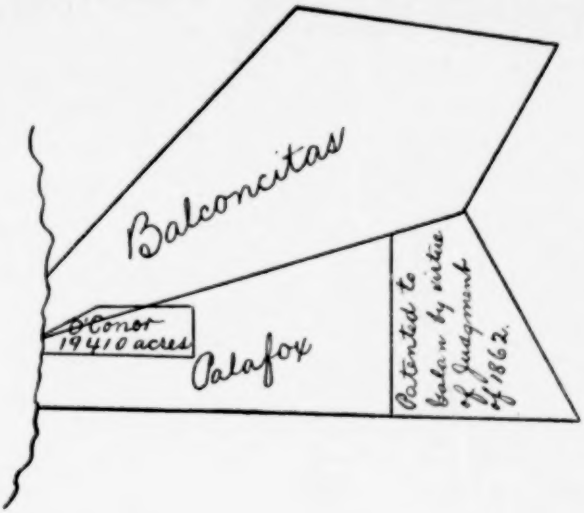
The court further found that the town of Palafox was destroyed by the Indians about the year 1818. The suit resulted in a judgment in favor of Ruggles confirming the title to a part of the land. The judgment rendered so far as it gave confirmation was as follows:

"It is in consideration of the premises hereby ordered, and decreed by the court that the said ancient title to the said Joaquin Galan to the said lands be confirmed to him, his heirs and assigns (except that part which was condemned to the use of the settlers) in the following manner, to-wit: Beginning at a point on a direct line between the Rincon de Galan and Cerrito Prieto, distant six Mexican leagues of five thousand varas each, from the left or western bank of the Rio Grande; thence in a straight line to the Cerrito Prieto; thence westerly to a hill called El Almud; thence southerly in a straight line toward the mouth of the San Pedro creek or arroyo and the center of the same to a point six Mexican leagues distant from the river measured by a line drawn parallel to said river as the rear line of the jurisdiction of the said town of Palafox; thence easterly along said parallel to the place of beginning."

The part of the land to which the title was confirmed by the Ruggles suit was that portion lying back of the line running parallel with the Rio Grande and the six Mexican leagues distant from it.

The land sued for in this case is a part of the land for which
92 the court refused to grant a decree of confirmation, being a part of the land between the Rio Grande and the line parallel with the river and six leagues distant from it.

The following plat will show the situation of the different tracts heretofore referred to:



Ruggles instituted another suit (being No. 11) about the same time he instituted the action in which the judgment referred to was rendered, the purpose of which was to have a confirmation of the title to another tract of land, which for convenience will be here designated as the Balconcitas tract, contiguous to and above that with reference to which the judgment of January 8, 1862, was rendered.

A motion for new trial was overruled, but no appeal was taken from the judgment of January 8, 1862.

In 1869 a motion was filed by Ruggles seeking a construction and modification of the decree of the 8th of January, 1862, but it
93 was overruled, upon the ground, as stated in the order overruling it, that the judgment was binding and final and beyond the jurisdiction of the court until the same shall have been reversed by the supreme court.

On the 4th of January, 1871, the suit for the confirmation of the title to the Balconsitas tract was dismissed for want of jurisdiction. From this order no appeal was taken.

At the March term, 1872, of the district court of Webb County, Ruggles filed a suit, being No. 69, styled Daniel Ruggles *vs.* The State of Texas, to reinstate and docket the suits for the confirmation of title, which, on the 8th day of March, 1872, was granted, and the suits were ordered reinstated and docketed, the suits being numbered 16 and 17. It does not appear that citation or other notice of the filing of this suit was given to any person.

On the 9th day of March, 1872, the motion of Ruggles to review and correct the judgment of January 8, 1862, having been heard by the court, was overruled.

On the 12th of March, 1872, the State appearing by her district attorney, F. E. Macmanus, a trial was had and a decree was rendered

setting aside the judgment of January 8, 1862, the judgment reciting that the petition filed in the case "disclosed sufficient cause for the equitable interposition of the court and that the same was sustained by the proofs adduced in support thereof."

A motion was granted changing the number of the two causes which had been numbered 16 and 17, to 11 and 14, so as to conform to the original file numbers, and another motion of plaintiff was also granted consolidating said suits on the 13th day of March, 1872.

On the same day, the 13th of March, 1872, judgment was rendered by the court confirming the title of Ruggles to all the land for the confirmation of which both suits had been brought—that is, for the Palafox tract and for the Balconsitas tract.

94 Objection was made to the admission in evidence of the order of the district court of Webb County setting aside the decree of January 8, 1862, and the subsequent proceedings of that court, which was overruled by the judge trying this case on the ground that the effect of such orders and judgment was a matter for his determination; and upon the final decision of the case the trial judge held that the attempted action of the district court of Webb County in setting aside the judgment of 1862 and rendering the judgments of 1872 were void.

The sole issue, as contended for by the plaintiff in error, involved in this petition, is as to the validity of the judgments of the district court of Webb County subsequent to the adjourning of the term of court at which the judgment of January 8, 1862, was rendered.

It may be conceded that if the judgments of 1872 were originally valid, or if they were not so but were subsequently validated by the legislature of the State of Texas, the judgment of the Court of Civil Appeals was correct; on the other hand, if the attempted action of the district court of Webb County in 1872 was void, and if the legislature has not ratified the said void judgments then the action of the Court of Civil Appeals in reversing and rendering judgment in favor of the defendant in error cannot be sustained.

Petitioner represents and shows to the court that in the judgment and proceedings in said cause, the said Court of Civil Appeals committed error in its rulings upon questions of law, the determination of which were necessary to the decision of said cause in said court, and which are relied upon by petitioner as grounds for its application for writ of error herein, as follows, to-wit:

The Court of Civil Appeals erred in holding that the act of the legislature of the State of Texas of April 4, 1881, validated
95 or in any wise affected the void judgment of the district court of Webb County rendered on the 13th day of March, 1872.

(*a*) The judgment of January 8, 1862, never having been appealed from or otherwise legally vacated was and still is binding upon Ruggles and those claiming title under him.

(*b*) The court which rendered the judgment of January 8, 1862, having adjourned lost all control or jurisdiction over the case, and said judgment not having been reversed by an appellate court on

writ of error or appeal, the same still remains a final judgment and is conclusive of the rights of the parties to this litigation. O'Connor having deraigned title from Ruggles, plaintiff in the suit in which said judgment was rendered.

(*c*) The act of February 11, 1860, as amended by the act of January 11, 1862, having expired by its own limitation, the district court of Webb County had no authority or jurisdiction, after the 11th day of February, 1865, to act upon or in any way affect the judgment which had previously been entered in said court, to-wit, the judgment of January 8, 1862.

(*d*) The judgment of January 8, 1862, having been rendered within three years from the passage of the act of February 11, 1860, is not and could not be affected or validated by the act of April 4, 1881; said judgment having always been, and being at the time of the passage of the act of 1881, a valid judgment.

(*e*) The suit which resulted in the invalid judgment of March 13, 1872, was a new and independent suit, if anything, and was instituted at a time long after the district court of Webb County had ceased to have any authority or jurisdiction to entertain a suit of the character which it purported to be; and therefore the district court of Webb County was not the proper district court in which suit should or could be brought for the purpose of confirming title. The act of August 15, 1870, was at that time in full force and effect and that act conferred upon the district court of Travis
95 County exclusive jurisdiction to hear and determine suits brought for the purpose of confirming titles of the character which it is claimed the title which it sought to have confirmed was.

(*f*) The purported suits which resulted in the judgment of March 13, 1872, was an independent action, if anything at all, and was instituted in a court which had no jurisdiction over the subject matter attempted to be litigated.

(*g*) The act of April 4, 1881, was intended to validate judgments only in cases where suits to confirm the titles which had been commenced within three years of the passage of the act of February 11, 1860, and which were finally disposed of subsequent to the 11th day of February, 1865, and before the 15th day of August, 1870.

(*h*) The act of April 4, 1881, only attempts to validate judgments which were irregular and void on account of the fact that they were rendered after the 11th day of February, 1865. The judgment of March 13, 1872, was invalid for other reasons than on account of the fact that it was rendered after the district court of Webb County had ceased to have jurisdiction over the subject matter of the litigation. The district attorney had no right or authority to appear for the state in the litigation. The act of August 15, 1870, had conferred upon the attorney general of the State the exclusive right and authority to represent the state in such cases, and the judgment, showing on its face that the district attorney appeared and represented the state, is void for this reason and the act of April 4, 1881, does not purport to validate judgments void for this reason.

(*i*) The Court of Civil Appeals erred in failing to affirm the judgment appealed from in this case, and in reversing and rendering

the same, because the undisputed evidence shows that plaintiff in error was entitled to the judgment which was rendered in its favor in the trial court.

97

Argument.

The judgments of 1872 having been subjected to judicial examination. In the case of Kennedy *vs.* Jarvis *et al.*, 1 S. W. Rep., 191. Judge Watts, Commissioner of Appeals, was called upon to determine the validity of the judgment of 1872 in so far as it affected the Balconcitas tract, but stated in his opinion that it was not necessary to consider the effect of the judgment of 1872 so far as it undertook to confirm the title to the Palafox tract. However, he held that the limitation of three years (subsequently extended two years) in the act of 1860 was a limitation of the time within which suits must be commenced; that when suits were so commenced and jurisdiction rightfully attached within such time, that then the case would be properly retained until the final disposition of the same was made.

The disposition of the case recommended by the Commissioners was approved June 25, 1886, by the supreme court, but with this statement: "The report of the Commissioners of Appeal examined and without expressing any opinion upon the first point discussed and decided in said report, we adopt the conclusions of the Commissioners, that the judgment should be affirmed, and it is accordingly so ordered," and a motion for rehearing was overruled.

On March 27, 1891, the supreme court through Chief Justice Stayton, rendered an opinion in the case of Texas-Mexican Railway Co. *vs.* Jarvis, 80 Texas 460, in which they reviewed the proceedings of the district court of Webb County and disposed of all the contentions of the defendant in error, O'Connor, with reference to the validity of the judgment of 1872.

It is true, as stated by the Court of Civil Appeals, in the opinion rendered in this case, that it was not necessary to the determination of the case just referred to that the supreme court should have passed upon this question; but the fact remains that they did so.

Evidently it was the purpose of the supreme court to overrule
98 the doctrine announced in the case of Kennedy *vs.* Jarvis, *supra*, so that it might be known that the State had not parted with the title to the land attempted to be appropriated by Ruggles.

If the decision in the case of Texas-Mexican Railway Co. *vs.* Jarvis, *supra*, announces the correct doctrine, there can be no question but that the judgment of the Court of Civil Appeals was erroneous, and this was evidently the view of the writer of the opinion in this case, but the Court thought as the supreme court in the Jarvis case, *supra*, had not referred to the act of April 4, 1881, in terms, the decision of that case was not binding as an announcement of the law on the subject to which it related.

It is true the court in the Jarvis case does not in express terms direct attention to or discuss the effect of the act of April 4, 1881, but that enactment was called to the attention of the court in the brief which was filed in the case, and if the judgments of 1872 had been

validated by the act of 1881, there would have been no occasion for the supreme court to have in any way discussed the effect of the judgments of 1872. And as it is never presumed that a court will do a vain thing, it must therefore be clear that the supreme court did not consider that the act of April 4, 1881, validated the judgments of 1872. At any rate, the only question now for the consideration of this court, as it appears to the writer of this petition, is as to the effect of the act of April 4, 1881, upon the judgments of the district court of Webb County of 1872.

That act is as follows:

"An act to authorize and require the issuance of patents to lands situated between the Rio Grande and Nueces rivers, the titles to which have been confirmed under the act of February 11, 1860.

"SECTION 1. Be it enacted by the Legislature of the State of Texas: That, whereas many suits to confirm land titles for land between the Nueces and Rio Grande rivers were brought within three years from and after the passage of the act of February
99 11, 1860, and in compliance with the terms thereof, but, owing to the war and other causes, were not finally adjudicated until after such three years had expired; and, whereas, the Commissioner of the General Land Office has refused to issue patents for titles not confirmed within such three years; and, whereas, it is just and equitable that parties who, in good faith and diligence, have attempted to comply with the terms of said act, should receive the full benefit thereof; therefore, the Commissioner of the General Land Office is hereby authorized and required to issue patents to all lands between said rivers, when suits to establish same under said act have been commenced within three years from the passage of same, and when the proper district court has finally confirmed such titles.

"SECTION 2. Whereas, several important railroads are surveying lines through the lands involved in this act; and, whereas, it is important that the titles to said lands should be settled at once, in order that the right of way may be granted to said railroads; therefore an urgency exists that this act take effect at once, and it is enacted that the same take effect from its passage.

"SECTION 3. The near approach of the close of the session creates an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and it is so suspended."

This act may, with advantage, be considered from several standpoints.

First as applied to this case, the preamble states the object of the act and limits it to suits which were not finally adjudicated until after the expiration of three years from the date of the act of 1860.

The judgment in which it was determined that Ruggles was not entitled to a confirmation of the title to the lands sued for in this case was rendered on January 8, 1862, and consequently within the three years during which the law of 1860 was to remain effective.

100 This clearly shows that the Legislature could not have had in mind the case instituted by Ruggles and which had actually gone to trial and been finally disposed of in 1862.

Second. The act only ratified judgments when the suits to establish the title had been instituted under the Act of 1860 within three years from the passage of the same.

The suit which was instituted in 1872, in the district court of Webb county was an independent suit. It was so treated by the court and referred to in the judgment. Cause No. 14 had been tried and disposed of over ten years before the new suit was instituted and Cause No. 11 had been dismissed for want of jurisdiction by the district court of Webb County, over a year before the new suit was instituted.

The new suit could in no sense be understood as a motion for a new trial.

"After the adjournment of the term of court at which a final judgment is rendered such judgment is no longer subject to the control of the trial court, and after such adjournment a new trial can not be granted no matter what may be urged in its favor. If the party complaining has been prevented by fraud, accident or mistake from making his defense his only remedy is by a new suit to reopen the case and such suit has all the characteristics of an independent action." Eddleman *vs.* McGlathery, 74 Texas 280.

Third. By the act of 1881 it was only intended to validate a judgment when the proper district court had finally confirmed the title.

The act of 1870 was the law in force at the time of the rendition of the pretended judgment of 1872, and that law expressly conferred exclusive jurisdiction upon the district court of Travis county in suits for confirmation of titles, hence the district court of Webb county was not a proper district court in which a final confirmation could have been had.

101 Fourth. The act of 1881 was intended to ratify judgments confirming title where the only defect in the judgment was that the judgments were not rendered until after the expiration of the time within which such suits were required by the law of 1860, as amended by the act of 1862, to be finally disposed of. It was not intended to ratify judgments which were void for other reasons.

The judgment of 1872 was void independently of the question of the right of the district court of Webb county to entertain the action, because the district attorney was not authorized to represent the state in the litigation.

The act of 1870 had expressly conferred that authority upon the attorney general, and the judgment of 1872 shows upon its face that the district attorney assumed to represent the state in that case.

Fifth. It cannot be supposed that the legislature intended to validate a void judgment which would give those who had secured it three times as much land as they were entitled to. If the judgment of 1872 is valid those claiming under it will hold the entire Palafox grant and also the entire Balconcitas tract, which will be four times as much land as the owners of the Galan grant were entitled to.

I respectfully submit that inasmuch as there are other cases pending involving the title to some 350,000 acres of land which are held

under the same claim as that under which the defendant in error holds the lands the title to which is involved in this suit, the court should grant the writ of error prayed for and remove all doubt as to the ownership of the land. Until the case of the Texas-Mexican Railway Co. *vs.* Jarvis, *supra*, is expressly overruled by the court which alone has the power to overrule it, the state officials would not be justified in patenting the unpatented portion of what is claimed to have been the Galan grant. If the claimants are entitled to the land they ought to have the evidence of ownership which a patent affords,
and the officials in charge of such matters ought to be so
102 clearly advised of their rights and duties as to enable them to conform to them.

If this honorable court, should sustain the contention which has been made in this petition with reference to the proper construction of the law of 1881, I invite the attention of the court to the brief which has been filed in behalf of the state and which I think satisfactorily presents the law with reference to the other points which the court may see proper to consider in determining the propriety of granting this application.

I therefore respectfully submit that the Court of Civil Appeals was in error in reversing the case and rendering judgment in favor of the defendant in error, and in overruling the motion filed by plaintiff in error for a rehearing; and that the judgment of the district court should have been affirmed, and that a writ of error should be granted, and that the judgment of the Court of Civil Appeals should be reversed and the judgment of the district court affirmed.

C. K. BELL,
Attorney General, Attorney for Plaintiff in Error.

Endorsed. App. No. 3611. In the Supreme Court of Texas. The State of Texas, Plaintiff in Error, *vs.* Thomas O'Connor, Defendant in error. Petition for writ of error. C. K. Bell, Attorney General of Texas, attorney for petitioner. Filed in Court of Civil Apeals, third supreme judicial district, Austin, Texas, Jan. 2, 1903. R. H. Connerly, Clerk. Filed in Supreme Court Jan. 2, 1903, F. T. Connerly, Clerk. Granted.

103 *Order Granting Application for Writ of Error.*

February 5, 1903.

App. No. 3611.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

From Travis County, Third District.

This day came on to be heard the application of The State of Texas for a writ of error to the Court of Civil Appeals for the third district,

and the same having been duly considered, it is ordered that said application be granted and the writ of error issue as prayed for.

Citation.

The State of Texas to the Sheriff or any Constable of Webb County, Greeting:

You are hereby commanded, by delivering to Thomas O'Connor if found in your county, or to H. G. Dickinson, attorney of record the accompanying certified copy of this writ, to summons said Thomas O'Conor to be and appear before the supreme court of the State of Texas, now in session at Austin, Texas, on Thursday, the 26th day of February, 1903, provided this writ shall have been served ten days prior to that time; but if this writ shall not have been so served, then on the first Thursday next ensuing, ten days after such service, pursuant to a writ of error, filed in the Clerk's Office of the Court of Civil Appeals, for the Third Supreme Judicial District, and issued on the 5th day of February, 1903, wherein (The State of Texas) is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in
104 error should not be corrected, and why speedy justice should not be done to the parties in that behalf. And of this writ, with your action endorsed thereon, make due return within ten days from the date hereof.

Witness, the Hon. Reuben R. Gaines, Chief Justice of the Supreme Court of Texas, the 5th day of February, in the Year of our Lord, one thousand nine hundred and three:

F. T. CONNERLY, *Clerk*,
By J. S. MYRICK, *Deputy*.

Endorsed: No. 3611. In Supreme Court. State of Texas *vs.* Thomas O'Conor. Citation. Issued February 5, 1903, F. T. Connerly, Clerk of Supreme Court, by J. S. Myrick, Deputy.

Sheriff's Return.

Came to hand on the 6th day of February, A. D. 1903, and executed on the 6th day of February, A. D. 1903, by delivering to H. G. Dickinson, attorney of record for Thomas O'Connor, a certified copy of this writ.

L. R. ORTIS,
Sheriff Webb Co.,
By F. FIERROS, *D'y*.

Sheriff's fees, $1.50.

105 *Order of Submission.*

No. 1193.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

From Travis County, Third District.

Submitted on briefs for both parties, and printed argument for defendant in error.

Opinion.

Filed May 4, 1903.

No. 1193.

THE STATE OF TEXAS, Plaintiff in Error,
vs.
THOMAS O'CONOR, Defendant in Error.

From Travis County, Third District.

On the 5th day of February, 1901, the attorney general of the State of Texas, instituted this suit against O'Conor in the district court of the 26th district, in Travis County, to recover from him 19,410 acres of land described in the plaintiff's petition and situated in Webb County. The facts of the case are stated by the Court of Civil Appeals as follows:

"The evidence established the fact that under the law of 1860, Daniel Ruggles instituted two suits in the district court of Webb County for the confirmation of the title to two large tracts of land, one of which was designated as the Palafox tract, and the other as the Balconcitas tract. The suit for the confirmation of the Palafox tract came to trial on the 8th day of January, 1862, and resulted in a judgment in favor of Ruggles for the confirmation of the title to a large tract of land, the southwestern boundary of which was six leagues of 5000 varas each from the western bank of the Rio Grande river and parallel with it. In 1869 a motion was filed by Ruggles, seeking a construction and modification of the de-
106 cree of the 8th of January, 1862, but it was overruled. In 1871 the other suit, the one for the Balconcitas tract, was dismissed by the court for want of jurisdiction. In 1871 Ruggles made a motion to redocket the two cases, which was granted; and, at the same time, he filed a petition in which he sought to have the decree of 1862 set aside, and have a confirmation of the title to both the Palafox and Balconcitas tracts but on the 8th day of March, 1872, these motions were refused. On March 12, 1872, Ruggles filed in

the same court another petition, seeking to set aside the decree of the 8th of January, 1862. The court set aside the decree and consolidated the motions. On the 13th of March, 1872, Ruggles filed an amended petition, in which he sought a confirmation of the title to both tracts, and upon which judgment was rendered in favor of Ruggles on the 13th of March, 1872.

"The land which was covered by the decree of confirmation of 1862 was patented to Ruggles, and the state has not, in any way, questioned the validity of that judgment or of the title of those claiming under Ruggles, to the land. The land sued for in this case is located entirely on that portion of the land which the court in its decree of 1862 declined to confirm in favor of Ruggles, but it is included within that which purports to have been confirmed to him by the decree of March 13, 1872."

Upon a hearing before the court judgment was given in favor of the state of Texas for the recovery of the land, which judgment was by the Court of Civil Appeals reversed and judgment there rendered in favor of O'Conor, from which last judgment this writ of error was granted.

The validity of the judgment entered by the district court of Webb County on the 13th day of March, 1872, in the case of Ruggles *vs.* The State, under which defendant in error claims, has heretofore been twice before this court. In the case of Kennedy *vs.*
107 Jarvis, (1 S. W. Rep., 191) the commission of appeals reported to the supreme court an opinion in which that judgment was held to be valid, but the supreme court expressly declined to approve of that opinion, and subsequently, in the case of Texas and Mexican Railway Co. *vs.* Jarvis, (80 Tex., 456) the question was decided by the supreme court, holding that judgment to be void. In the latter case the court, speaking by Chief Justice Stayton said: "In the case of Kennedy *vs.* Jarvis, (1 S. W. Rep., 191) on the judgment now in question, a contrary rule was announced by the commission of appeals but this court declined to express any opinion upon the question and affirmed the judgment of the court below upon some ground not stated." The unapproved opinions of the commission of appeals are not authoritative expressions of the court.

It is claimed that a determination of the question was not necessary to the decision of the Railway Company *vs.* Jarvis, and that the opinion in that case is not authority upon the issue as now presented. It is true that the case then before the court might have been disposed of without passing upon the validity of the judgment, but the issue arose upon the facts and was presented to and decided by the court. It is frequently the case that a court discusses and decides questions presented which might be omitted in a final determination of the case, but that does not affect the weight of the opinion as authority. We follow the case of Railway Company *vs.* Jarvis, because of its authoritative character and because we unqualifiedly approve of the conclusion reached by the court upon this question.

In Railway Company *vs.* Jarvis, above cited, Chief Justice Stayton announced principles which controlled in the determination of

the question then and are equally applicable now. That opinion rests upon the following propositions of law:

1. It was a special proceeding, authorized by the statutes to be instituted against the state, and the district court had no
108 authority except to proceed in the manner prescribed by the act of 1860.

2. The law of 1860, which alone authorised the proceeding, expired by its own limitations, in 1865, and, at the date of the judgment relied on by the defendant in error, there was no law in existence which authorized the proceeding to be had in that court.

3. The district court under the act of 1860 had no equity power conferred upon it by which it could after the expiration of the term set aside its judgment of February 8, 1862.

There can be no doubt that the judgment of the district court of Webb County, of March 13, 1872, was void, nor that the judgment rendered by that court in the former case on the 8th day of January, 1862, was a valid and subsisting judgment, but counsel for O'Conor claims that the judgment of March 13, 1872, was validated by the following section of the act of 1881:

"SECTION 1. Be it enacted by the Legislature of the State of Texas: That, whereas, many suits to confirm land titles, for land between the Nueces and Rio Grande rivers were brought within three years from and after the passage of the act of February 11, 1860, and in compliance with the terms thereof, but, owing to the war and other causes, were not finally adjudicated until after such three years had expired; and, whereas the commis-ioner of the General Land Office has refused to issue patents for titles not confirmed within such three years; and, whereas, it is just and equitable that parties who, in good faith and diligence, have attempted to comply with the terms of said act, should receive the full benefit thereof: therefore, the commissioner of the general land office is hereby authorized and required to issue patents to all lands between said rivers, when suits to establish same under said act have been commenced within three years from the passage of same, and when the proper district court has finally confirmed such titles."

This is a remedial statute, and if the judgment of 1872, is
109 embraced in the spirit of that act we must sustain the judgment of the Court of Civil Appeals. The spirit of the law is "the intent, the real meaning" of the legislature to be ascertained from the language used. From the language of the law it is manifest that the legislature did not intend to validate all judgments that might have been entered by any district court confirming titles of the character now in question. We must therefore look to the terms of the statute to see if the judgment of 1872 is embraced within the purpose and meaning of the legislature as expressed in that law, which prescribed that the judgment to be validated must have been entered in a suit that was begun in the district court of the county where the land was situated within three years from the 11th day of February, 1860. The suit in which the judgment in question was entered was an independent proceeding, commenced in the year 1872, many years after the time limited by the law of 1860 for the

commencement of such actions. (Goss *v.* McClaren, 17 Tex. 107.) The law also prescribed that the judgment to be validated must have been entered after the expiration of the three years in a suit wherein the matter had not been finally adjudicated within the time prescribed. The judgment under which O'Conor claims title was entered after the expiration of the three years, but, in the original suit, commenced within the time prescribed by the act of 1860, final judgment was entered in 1862. At the date of the last judgment the law of 1860 had expired by its own terms and another law was enacted by the legislature in 1870 conferring exclusive jurisdiction in such cases upon the district court of Travis County, hence the judgment set up in this case was not entered in a proper district court as required by the act of 1881. That judgment did not set aside the judgment of 1862.

The judgment of 1872 is not embraced in the terms of the validating law, but is excluded by the specific designation of the judgments which the legislature intended to make valid. It could not be validated by the act of 1881 unless that law had the effect to set aside and annul the judgment rendered in 1862, otherwise there would be two antagonistic judgments operating at the same time upon the same subject. There is no language in the act which would justify such a conclusion.

We conclude that the judgment entered by the district court of Webb County in 1862 is a valid and subsisting judgment and determined the rights of Ruggles in the land in controversy; that the subsequent judgment entered by the said court was void in every particular, in so far as it affects the land sued for, being without power or authority of law, and that the Court of Civil Appeals erred in reversing the judgment of the district court and in entering judgment for defendant in error. It is therefore ordered that the judgment of the Court of Civil Appeals be reversed and that the judgment of the district court be in all things affirmed and that the State of Texas recover the costs of the court of Civil Appeals and of this court against the defendant in error Thomas O'Conor.

T. J. BROWN,
Associate Justice.

Endorsed: No. 1193. The State of Texas *vs.* Thomas O'Conor. Opinion. Judgment of the Court of Civil Appeals reversed and judgment of the district court affirmed. Brown, Associate Justice. Filed in Supreme Court, May 4, 1903. F. T. Connerly.

Judgment.

May 4, 1903.

No. 1193.

THE STATE OF TEXAS
vs.
THOMAS O'CONOR.

From Travis County, Third District.

Opinion delivered by Associate Justice BROWN:

111 This cause came on to be heard on writ of error to the court of Civil Appeals for the third supreme judicial district, and the original transcript in said cause being before the court as well as the transcript showing the proceedings had in said court of Civil Appeals, and these having been duly considered, because it is the opinion of this court there was error in the judgment of the court of Civil Appeals, but that there was no error in the judgment of the district court. It is therefore considered, adjudged and ordered that the judgment of said court of Civil Appeals be reversed and the judgment of said district court be in all things affirmed: That the defendant in error, Thomas O'Conor, and his sureties, P. J. Macmahon, J. H. Murphy, and H. G. Dickinson, pay all costs in this behalf expended in this court and in the court of Civil Appeals, and this decision be certified to the district court for observance.

Motion for Rehearing.

Filed May 18, 1903.

In the Supreme Court of The State of Texas.

No. 1193.

THE STATE OF TEXAS, Plaintiff in Error,
vs.
THOMAS O'CONOR, Defendant in Error.

To the Honorable Judges of said Court:

Now comes Thomas O'Conor, defendant in error, by his attorney and represents and shows to the court that there was and is error in the action of the court in reversing the judgment of the court of civil appeals rendered in this cause and in affirming the judgment of the trial court for the following reasons; to-wit:

First: The court having the entire record before it, erred in not sustaining the first assignment of error filed by the defendant in

error in the trial court, and in not ordering that said ca
112 be removed to the proper circuit court of the United St
for trial.

Statement.

The first assignment of error filed by defendant in error in the t
court is as follows: "The court erred in sustaining plaintiff's exc
tion to defendant's petition filed on the 5th day of October, 19
praying for the transfer of this cause to the United States Circ
Court for the Western District of Texas, upon the ground that
fendant was at the time this suit was begun an alien and a subj
of United Kingdom of Great Britain and Ireland and a resident
the State of Tamaulipas in the Republic of Mexico, and that the m
ters in dispute in said suit exceed the sum of Two thousand doll
in value exclusive of costs." This assignment of error is urged
the proposition and argument in the brief of defendant in error fi
in the court of civil appeals. The petition for removal was propo
before the trial court. Without contesting the facts contained
the petition counsel for the State excepted to it on the ground th
"the law does not authorize the transferring of a case in which
sovereign state is plaintiff to a United States Court; said state n
being a citizen of any other state."

Second. The court having the entire record before it, erred in n
sustaining the second assignment of error filed by the defendant
error in the trial court, and in not holding that the district court
Travis County did not have jurisdiction of the subject matter of th
suit.

Statement.

The second assignment of error filed by the defendant i
error in the trial court is as follows: "The court erred in not sustai
ing defendant's plea to the jurisdiction of the court, filed May
1902, alleging that the land which is the subject matter of this su
is situated in Webb County, State of Texas, and not in Trav
113 County in said State." Under this assignment of error, th
defendant in error in his brief in the court of civil appea
urged the following proposition: "The jurisdiction of a state court i
so far as it is fixed by the constitution of the state is not subject to th
regulation or control of the legislature."

Remarks.

Article 5, Sections 7 and 8 of the Constitution of this State pro
vide as follows: "This State shall be divided into as many judicia
districts as may now or hereafter be provided by law. * * * Fo
each district there shall be elected by the qualified voters thereof a
a general election a judge, * * * who shall have resided in th
district in which he was elected for two years next preceding hi
election who shall reside in his district during his term of office

The district court shall have original jurisdiction of all suits for trial of title to land and the enforcement of liens thereon." These sections of the constitution evidently confer upon each district court the exclusive jurisdiction of all cases for the trial of title to lands situated within the territorial limits of the district. It is no answer to this position to remain silent upon the proposition as the court of civil appeals did and as this court did, for this question of the jurisdiction of the district court of Travis County was specially raised by a proper plea. Nor is this proposition answered by simply saying, as the attorney general does in his brief in the court of appeals, that the question is one of venue and that the legislature has the power to change the venue. It has no such power when the venue is fixed by the constitution either specifically or by necessary implication. This doctrine is emphatically endorsed in *ex parte* Whitelow 59 Tex. Rep., 273.

Third. The court erred in holding that the judgment of the district court of March 13, 1872, is void, because said judgment having been held valid by the decision of this court in Kennedy *vs.*
114 Jarvis, (4 S. W. Rep., 191) became a rule of property, under which defendant in error contracted for the land in dispute and by which his title thereto became a vested right, which ought not and cannot be legally divested by any subsequent decision or legislation.

Authorities.

Insurance Company *vs.* DeBolt, 16 How., 432;
Pleasant Tp. *v.* Aetna Life Ins. Co., 138 U. S. 67;
Burgess *v.* Seligman, 107 U. S. 20;
Rolls *v.* Douglass, 105 U. S. 728;
City of Kenosha *v.* Sampson, 9 Wall., 28;

Fourth. The court erred in holding that the act of the legislature of April 4, 1881, did not validate the judgment of the district court of Webb County of March 13, 1872, because said judgment is directly within the spirit and letter of said remedial act.

Remarks.

It is difficult to conceive of a judgment that could fit more closely the description of the judgments described in the act of 1881, than the judgment of the district court of Webb County of March 13, 1872. This court admits in its opinion in this case that even if the judgment of March 13, 1872, is void, it could be validated by the act of 1881. This admission is contained in the following language of the opinion: "This is a remedial statute and if the judgment of 1872 is embraced in the spirit of that act we must sustain the judgment of the court of (civil) appeals." To say that the act of 1881 is a remedial statute is to say that it should be liberally construed: That if there be any doubt or ambiguity in the language used, that construction should be adopted which will best advance the remedy

provided and help to sup-ress the mischief against which it was aimed, and that all reasonable doubts should be resolved in favor of the applicability of the statute to the particular case. Although the court holds that this act is a remedial statute, and, conse-
115 quently, subject to this rule of liberal construction, yet, it is respectfully submitted that the court applies to the language of the act the strictest construction of which it is capable. The act provides for the validation of judgments in "suits brought within three years from and after the passage of the act of February 11, 1860." As a reason for excluding the judgment of March 13, 1872, from the spirit and meaning of this language of the act the court states, that the suit in which that judgment was entered was an "independent proceeding commenced in the year 1872, many years after the term limited by the law of 1860 for the commencement of such actions." It is respectfully submitted that the facts in the record do not bear out that statement. On the contrary, the statement of facts found by the court of civil appeals and quoted in the opinion of this court show that the judgment of 1872 was entered upon the trial of two consolidated suits properly begun under the act of 1860: That one of these suits came to trial in 1862 and resulted in a judgment of January 8, 1862, that there were several proceedings had in the court in reference to these two cases until March 12, 1872, when Ruggles filed a petition seeking to set aside the judgment of January 8, 1862, upon the hearing of which that judgment was set aside by a judgment duly entered on the 12th day of March, 1872. When this judgment was set aside did not the two cases stand on the docket just as they did in 1860 when they were first filed? Standing thus upon the docket as original suits, upon motion of Ruggles they were consolidated; and in these two consolidated suits on March 13, 1872, Ruggles filed an amended petition. We, therefore, find in these proceedings nothing that can be properly characterized as "an independent proceeding commenced in the year 1872." It is only by a strained construction—a departure from the ordinary signification of legal terms—to say that either the petition filed for the purpose of setting aside the judgment of 1862 or the amended petition filed in the consolidated suits, was "an independent
116 proceeding." A petition for review can in no sense be regarded as an "independent proceeding," if by that term a new suit is meant, for a petition for review is absolutely *dependent* upon the existence of a prior suit and its only object is to modify or to set aside the judgment rendered therein. And an amended petition filed in consolidated suits already pending can by no construction be regarded as an independent proceeding. It is certainly a very strained and illiberal construction to say that the judgment of 1872 was entered in an independent proceeding commenced in 1872 and thereby excluded from the benefits of the remedial act of 1881.

It is further insisted by the court in its opinion in this case, as an additional reason for excluding the judgment of 1872 from the benefits of this remedial act, that this judgment was not rendered by the proper district court as required by that act, because at the time of its rendition the district court of Travis county, under the act of August

15, 1870, had exclusive jurisdiction of suits for confirmation of title. In reply to this I can only say that I cannot conceive how the act of 1881 can have any reference to the act of August 15, 1870, or to any proceedings under it, because the act of 1881 was intended to validate only such judgments as were entered in suits brought within three years of the passage of the act of 1860. Whatever other requisites a judgment must possess in order to receive the benefits of this act, it must have that one. As the district court of Travis County had no jurisdiction of suits for confirmation of titles until August 15, 1870, it is obvious that it could not have rendered any judgment of confirmation of title within three years of the passage of the act of 1860. Its jurisdiction in such cases did not commence until seven years after the expiration of that time. How then the district court of Travis County can be regarded as the proper court for the rendition of any judgment that could be validated by the act of
117 1881 is quite inconceivable, as that act could only operate on those judgments that were necessarily rendered before that court had any jurisdiction in such matters. And yet this is one of the considerations that is put forward as a reason for the excluding the judgment of 1872 from the benefits of the remedial act. Strict construction could scarcely go further than this.

The court further contends in its opinion that "the judgment of 1872 could not be validated by the act of 1881 unless that law had the effect to set aside and annul the judgment rendered in 1862, otherwise there would be two antagonistic judgments operating at the same time upon the same subject." It should be remembered that the judgment of 1862 was set aside by a judgment of the district court rendered before the judgment of March 13, 1872, as the record in this case plainly shows. If the judgment of March 13, 1872, was validated by the act of 1881 if it is found to be within the spirit of that act, even though it be a void judgment, then the action of the court in setting aside the judgment of 1862 must be validated also, for the validation of a judgment necessarily validates all the acts and proceedings of the court that lead up to that judgment. Being a remedial statute, the act of 1881 should be so construed as operating to do whatever was necessary to accomplish its objects. It, therefore, must be held to have validated the action of the district court in setting aside the judgment of 1862, so that we are justified in claiming that this judgment was practically, though indirectly, set aside by the necessary operation of the act of 1881.

Fifth. The court having the entire record before it erred in not sustaining the tenth and eleventh assignments of error filed by defendant in error in the trial court and in not holding that the undisputed evidence showed that the title to the land in dispute is outstanding in the settlers of the town of Palafox, or their heirs and assigns, and is not vested in the state of Texas.

118 *Statement.*

The tenth and eleventh assignments of error filed by defendant in the trial court are as follows:

Tenth Assignment of Error:

The court erred in not rendering a final judgment for defendant, because the evidence shows that if the title to the premises in dispute is not in defendant, then it is outstanding and vested in the citizens of the ancient town of Palafox, or their heirs and assigns and is not in the state of Texas.

Eleventh Assignment or Error:

The court erred in not rendering final judgment for plaintiff, because the judgment of the district court of Webb County Texas, rendered on the 8th day of January, 1862, in the cause entitled Daniel Ruggles *vs.* The State of Texas, upon which plaintiff relied shows on its face that the land in dispute is titled land, in and to which the plaintiff has not nor has ever had any right, title or interest.

Under these two assignments of error, defendant in error urged the following proposition:

"The judgment of the district court of Webb County of January 8, 1862, in the cause entitled, Daniel Ruggles, *vs.* The State of Texas, was introduced in evidence and relied upon by both parties to this suit: the court in that case having jurisdiction of the parties and the subject matter, the recital of said judgment of any fact essential to the rendition of the judgment or without the proof of which it could not have been rendered, is, as to all parties and privies thereto, conclusive evidence of the existence of such fact." This judgment is set out in full in the transcript on pages 22 to 25 and also in the brief of defendant in error filed in the court of civil appeals on pages 11 to 15, and it recites: "that about the year 1810 the government of Spain being desirous of forming a town on the river bank
119 where the said Manuel Garza had planted his ranch, the said government did then and there condemn and take from the said Manuel Garza, for the use of the government all that part of his said tract of land lying and fronting on the Rio Grande to the depth of six Mexican leagues, and did then and there lay out and establish the town of Palafox, on the eastern bank of the Rio Grande with its exidos extending across the same, and gave and donated the lands above and below said town to the settlers of the same in the form or shape of *porciones* running back for depth six Mexican leagues, or 30,000 varas and that for said condemnation the said Manuel Garza was reimbursed in lands lying above the town and jurisdiction of Palafox." That judgment also recited that "the jurisdiction of Palafox extended five leagues above and the same distance below the center of the plaza of the said town." The land in dispute in this case is situated within the limits of the porcion land of the town of Palafox. Trans. pp. 30, 31.

Remarks.

Defendant in error in his answer in the trial court pleaded the judgment of January 8, 1862, as an estoppel against the state alleging that the recital in said judgment of the fact that the land in dispute, with other land, was expropriated, and granted, and donated by the government of Spain to the settlers of Palafox in 1810, was binding upon the state and showed outstanding title in the said settlers or their heirs and assigns, and that the defendant in error by his purchase of said land in dispute and by his peaceful and adverse possession of the same for more than twenty years, had acquired a good and perfect title in law and equity therto.

Although defendant in error pleaded this defense of estoppel and outstanding title in his answer and has repeatedly urged it under these last mentioned assignments of error, by proposition and argument in his briefs filed in this court and in the court of ap-
120 peals, he has not yet been able to elicit any opinion upon it. The only aprpoach to the expression of such an opinion is the statement in the opinion of this court, viz: "We conclude that the judgment entered by the district court of Webb County in 1862 is a valid and subsisting judgment and determined the rights of Ruggles to the land in controversy."

If the judgment of 1872 is void and was not validated by the act of 1881, it follows that the judgment of 1862 is valid; and it follows also that the recital in that judgment of any fact essential to its rendition and without the proof of which it could not have been rendered, is conclusive evidence of the existence of such fact both as to the state and to Ruggles, and those who claim under him. Now the judgment of 1862 could not have been rendered unless the fact had been ascertained and proved upon the trial that the government of Spain in 1810 expropriated the land, which includes the land in dispute, and, thereafter, granted and donated it to the settlers of the town of Palafox. That fact having been found by the court and set out and expressed in its judgment, no further adjudication in reference to said land, thus expropriated and regranted, is made or attempted to be made in said judgment. The title to it was not confirmed to Ruggles or to any other person; nor was it vested in or confirmed to the state, because the court had found and decided that it was outstanding in third persons who were not parties to the suit.

If A were to set up some claim to land that was in possession of B, who also claimed title to it, and B should bring suit against A in trespass to try title for the purpose of establishing his title and removal of cloud, and if upon the trial of said cause a judgment should be entered that B having proved his title to one-half of the land should recover that half, but as to the other half he could not recover because the evidence showed outstanding title to the same in C or his heirs and assigns, not parties to the suit, what would be the
121 effect of such a judgment? Would any court hold that it conferred upon A any right, title or interest in or to any of the land? On the contrary, would it not be held that A would be

bound by the recital of outstanding title if he should subsequently sue B for the land covered by such title and that he could not recover any part of it unless he showed that he had acquired the outstanding title. The facts show a case even stronger than this against the state in the suit at bar, because the judgment of 1862, relied upon by the state, is conclusive evidence, first, that the land in dispute was granted by the government of Spain to Joaquin Galan some time previous to the year 1804; second, that Joaquin Galan sold it to Manuel Garza; third, that, the government of Spain expropriated and granted it to the settlers of the town of Palafox in 1810 in the shape of porciones. Here is undisputed and conclusive evidence that in 1860 this land was titled land, and there is not a particle of evidence that the state has acquired any title to it since the date of that judgment. During all these forty years since the rendition of this judgment the land in dispute as the record shows has been in the peaceable and adverse possession of the defendant in error and those under whom he claims, all holding the same under deeds duly recorded. Trans. p. 28. Besides the title papers in the chain of title of the defendant in error show on their face that they convey porciones of land in the jurisdiction of Palafox and as these deeds are more than thirty years old the presumption arises that they are valid and that the grantors therein had the title which they undertook to convey. Trans. pp. 38-40. That the state is bound by the law of estoppel by judgment and by rules of law in reference to outstanding titles and presumptions arising in favor of ancient deeds, is well established. This court in Fristoe *vs.* Leon and H. Blum, 92 Tex., Rep., p. 76, emp-a*th*ized that doctrine as follows: "It
122 is well settled that so long as the state engaged in making or enforcing laws or in the discharge of any other governmental function it is to be regarded as a sovereign and has prerogatives which do not appertain to the individual citizen, but when it becomes a suitor in its own court or a party to a contract with a citizen the same law applies to it as under like conditions govern the contract of individuals." The same doctrine is enunciated by this court in State *vs.* Kroner, 2 Tex. Rep., 492, and in State *vs.* Purcell, 16 Tex. Rep., 305, as follows "Where no exception has been made by law, the state must prosecute her suits for civil rights in the same way and under the same forms of remedy prescribed by the laws of the forum for individual suitors." We find the same doctrine enunciated in State *vs.* Snyder, 66 Tex. Rep., 700; Carr *vs.* State 127 Ind., 204; Green *vs.* State 73 Cal., 32; State *vs.* Cardozo 8 S. C., 79; Daniels *vs.* State 89 N. Y., 36; State *vs.* Deseis, 39 Kan., 509; Davis *vs.* Grey, 16 Wall., 203. That the state is estopped by the recitals in the Judgment of 1862, I cite Cunningham *vs.* Shanklin, 60 Cal., 118; Newport Bridge Co. *vs.* Douglass, 12 Bush., 673; Taylor *vs.* Wallace 31 Ohio 151; Boyd *vs.* Alabama, 94 U. S., 645. If then the state is bound by the recitals in the judgment of 1862 and by the well known rules of law in reference to outstanding titles then this court should have affirmed the judgment of the court of civil appeals, even though that court did not base its judgment upon these grounds. In Durrell *vs.* Farwell, 88 Tex. Rep., 98, this court held that "The supreme court

will not reverse and render unless the facts be such that the court below could not properly have rendered any other judgment than that rendered by the supreme court." Again in Bomar *vs.* West, 87 Tex. Rep., 299, this court held that "When the court of civil appeals has decided a case upon the merits and a writ of error has been granted, the supreme court has uniformly considered the whole case so far as necessary to its proper disposition upon all errors assigned, although the court of civil appeals may not have
123 considered it necessary to determine all the questions presented."

The defendant in error has relied upon the recital of outstanding title contained in the judgment of 1862 as being sufficient in itself to defeat the action of the state. He is entitled to the opinion of this court on this plea of outstanding title and this evidence in support of it, and if they are not sufficient as against the state, then the case should be remanded for a new trial for the recital in the judgment is some evidence of outstanding title however indefinite it may be. Moreover by the act of the legislature of February 10, 1852, the state admitted that the title to four of the porciones in the jurisdiction of Palafox was outstanding in private parties and relinquished any claim that she may have had to the same. In addition to this evidence of outstanding title there is the decision of this court in Texas Mexican Ry. Co. *vs.* Jarvis, 80 Tex. Rep., 456, which practically holds that all the land expropriated by the government of Spain and granted to the settlers of Palafox is titled land and not subject to the location of land certificates. If it is the opinion of this court that in addition to this evidence of an indefinite outstanding title, defendant in error should show that this outstanding title is in some particular person or persons then he should be given an opportunity to produce such proof.

Defendant in error alleges that Hon. C. K. Bell, Attorney General who resides in Travis County, Texas, is the attorney for the plaintiff in error herein and defendant in error prays that the clerk of this court issue a precept directed to the sheriff of Travis County, commanding him to deliver a copy *od* this motion to the said C. K. Bell.

Defendant in error prays that this court set aside its judgment heretofore rendered in this case reversing the judgment of the court of civil appeals and affirming the judgment of the trial court and that a rehearing of this cause in this court be granted and
123½ the judgment of the Court of Civil Appeals in favor of defendant in error be affirmed and for all other and further relief to which defendant in error may be entitled.

H. G. DICKINSON,
Attorney for Defendant in Error.

Service of the above and foregoing motion for rehearing hereby accepted.

C. K. BELL,
Attorney for Plaintiff in Error.

Endorsed: Motion No. 1085. No. 1193. The State of Texas, Plaintiff in Error *vs.* Thomas O'Conor, Defendant in Error. Motion for rehearing. Filed in Supreme Court, May 18, 1903, F. T. Connerly, Clerk. Overruled June 8, 1903.

Opinion on Motion for Rehearing.

Filed June 8, 1903.

Mo. No. 1085.

THE STATE OF TEXAS, Plaintiff in Error,
vs.
THOMAS O'CONOR, Defendant in Error.

From Travis County, Third District.

On Motion for Rehearing.

Defendant in Error sought to remove this case to the United States Circuit Court upon the ground that he was, at the time the suit was instituted, "an alien and the subject of the United Kingdom of Great Britain and Ireland, and a resident of the State of Tamaulipas in the Republic of Mexico." The application for removal was properly denied.

The act of Congress of the United States passed on the 13th day of August, 1888, prescribed the ground for removal of causes which is applicable to the facts of this case to be a controversy "be-
124 tween citizens of a state and foreign states, citizens or subjects." Texas is not a citizen of a state, therefore does not come within the terms of the statute. Postal Telegraph Cable Co. *vs.* Alabama, 155 U. S., 487.

O'Conor insists that the State of Texas is estopped by the recitals in the decree of the district court of Webb County entered on the 8th day of March, 1862, in the suit by Daniel Ruggles *vs.* State of Texas, that the government of Spain "gave and donated the land above and below the said town (Palafox) to settlers of the same in the form and shape of porciones." It is claimed that the recital is sufficient to establish an outstanding title as against the state. It is a settled rule of law that to operate as an estoppel against a party to a judgment the decision must be of a fact directly involved in and necessary to the determination of the issue presented to the court. (Black on Judgments, Sec. 611; Horton *vs.* Hamilton, 20 Tex., 610; Lewis and Nelson Appeal, 67 Penn. St., 153.) The proceedings in that case presented the issue to the court that Daniel Ruggles claimed title to the land by virtue of a grant made by the Spanish Government to some person from whom Ruggles derived his title, and this fact being established, another issue arose, which was, that after making the grant the Spanish Government in the exercise of its sovereign power expropriated or condemned the land and thereby restored it to the ownership of the government.

The incidental question which is presented by the recital in the judgment, that after resuming the title to the land the Spanish Government made a donation of a part of it to other parties, neither tends to support the title asserted by Ruggles nor to defeat the claims by the state that the government had extinguished that title by the legitimate exercise of its power, therefore the recital is of an immaterial fact which derives no force from being stated in the judgment.

125 The motion for rehearing is therefore overruled.

T. J. BROWN,
Associate Justice.

Endorsed: Motion No. 1085. Cause No. 1193. State of Texas *vs.* Thomas O'Conor. Opinion on motion for rehearing. Motion overruled. Filed in Supreme Court June 8, 1903. F. T. Connerly, Clerk. Brown, Associate Justice.

Order Overruling Motion for Rehearing.

June 8, 1903.

Mo. No. 1085.

STATE OF TEXAS
vs.
THOMAS O'CONOR.

From Travis County, Third District.

Opinion delivered by Associate Justice BROWN:

This day came on to be heard the motion of Thomas O'Conor, defendant in error, for rehearing, and the same having been duly considered, it is ordered, that said motion be overruled; that the defendant in error Thomas O'Conor pay all costs incurred on this motion.

126 *Petition for Allowance of Writ of Error.*

In the Supreme Court of the State of Texas.

No. 1193.

THE STATE OF TEXAS, Plaintiff in Error,
vs.
THOMAS O'CONOR, Defendant in Error.

To the Honorable R. R. Gaines, Chief Justice of the Supreme Court of Texas:

Now comes Thomas O'Conor, defendant in error, by H. G. Dickinson, his attorney, and complains that in the record and proceedings

had in said cause and also in the rendition of the judgment therein by this court on the 4th day of May, 1903, and also in the rendition of the judgment of this court in overruling the motion for a rehearing therein on the 8th day of June, 1903, manifest error has happened to great damage to defendant in error. Wherefore defendant in error prays for an order allowing him to prosecute a writ of error to the Honorable The United States Supreme Court under and according to the laws of the United States in that behalf made and provided also for an order fixing the amount of bond which the defendant in error shall give and furnish upon said writ or error.

As grounds for granting and allowance of said writ of error, defendant in error respectfully submits the following, viz:

I.

Before filing his answer in the trial court, defendant in error, who was defendant in the trial court and who will hereinafter be styled defendant, filed his petition and bond for the removal of the cause from the district court of Travis county to the proper Circuit Court of the United States, alleging as a ground therefor that he was a citizen of the United Kingdom of Great Britain and Ireland and a resident of the State of Tamaulipas in the Republic of Mexico, and that the matter in dispute exceeded in value $2000.00 exclusive of costs.

Without contesting the facts alleged the plaintiff, the State
127 of Texas, through its attorney general, excepted to the petition for removal on the ground that the law does not authorize the removal of a suit in which a sovereign state is plaintiff and an alien is defendant. The trial court sustained this exception, and this court by its said judgment overruling the motion for a rehearing, affirmed this action of the trial court, and thereby rendered a decision against a right and privilege claimed by the defendant under the statutes and constitution of the United States, which right and privilege was specially set up and claimed by defendant.

II.

This suit was prosecuted by The State of Texas, through its Attorney General as plaintiff, under and by virtue of the act of the Twenty-seventh Legislature of Texas, approved on the 9th day of September, 1901.

Section first of this act provides as follows: "Any person or per-
" sons who may be the original grantee, heir, legal assign or — and
" manner the legal owner or claimant of any grant, tract or survey
" of land or part thereof, situated between the Nueces and Rio
" Grande rivers, and below a line drawn from the northern boun-
" dary of Webb County to the mouth of the Moros creek where th
" same empties into the Nueces river, and emanating or claimed to
" have emanated from Spanish or Mexican Governments, and hav-
" ing its origin at such time as to be, and being within the protection
" guaranteed by the treaty of Guadalupe Hidalgo entered into be-
" tween the United States and Mexico, and proclaimed on the 4th
" day of July, A. D. 1848, may file a petition in the district court

"of Travis County, Texas, against the State of Texas, as defendant
"for the confirmation of title there to, and also for the adjudication
"of his, her, or their title, right and interest or claim therein or
"thereto, as against the state etc., and the district court shall there-
"after at a regular term thereof investigate the same, and try
128 "said cause in accordance with the laws of Nations, the laws,
"usages and customs of the government from which said
"ownership, right, interest or claim emanates or is derived, and the
"constitution, laws and treaties of the United States and of this, the
"State of Texas, and the principles of equity, so far as the same are
"applicable, &c.

Section eleventh of said act, provides as follows: "The attorney
"general is hereby directed and required to institute and prosecute
"in the name of the State of Texas such suits as may be necessary
"to recover from the person or persons in possession thereof all lands
"which are held or claimed under titles emanating from the Spanish
"and Mexican governments where no valid evidence of such grants
"are to be found in the records or among the files of the general
"land office &c., and such suits shall be brought, prosecuted and
"tried in the district court of Travis County."

This suit is an action of trespass to try title, filed by the attorney general pursuant to said act, to recover the land in dispute, all of which is situated in Webb County Texas between the Nueces and Rio Grande rivers, and below a line drawn from the northern boundary of Webb County to the mouth of Moros creek where it empties into the Nueces river, according to the boundaries and description thereof as set out in the petition of the plaintiff, the State of Texas.

Defendant in his answer pleaded a title to the land in dispute and described in plaintiff's petition, under and by virtue of a grant of land from the Spanish government to Joaquin Galan, made about the year A. D. 1767, and prior to the year A. D. 1804. By this plea of title to land thus situated, defendant claimed to be the owner of a tract of land embraced in a "grant emanating or claimed to have emanated from the Spanish government and having its origin at such a time as to be, and being within the protection guaranteed by the treaty of Guadalupe Hidalgo," by which plea defendant
129 claimed a right, title and privilege under a treaty of the United States, and the decision of this Honorable Court was against the right, title and privilege thus specially set up and claimed by the defendant.

III.

Defendant upon the trial of said cause in the trial court, pleaded to the jurisdiction of that court, alleging that the land sued for was situated in Webb county and that the district court of Webb county under Section 7, Article 5, of the Constitution of the State of Texas, had exclusive jurisdiction of said cause.

This plea was overruled by the trial court, to which action of the court, defendant duly excepted and under his second assignment of error urged the proposition, viz: The jurisdiction of a state court in so far as it is fixed by the constitution of the state is not subject to the regulation or control of the legislature.

The action of the trial court in overruling said plea to the jurisdiction was sustained, and affirmed by this court by its judgment affirming "in all things" the judgment of the trial court.

By this action of the trial court and by the judgment of this court, defendant's constitutional right to be sued for said land, if sued at all, in the district court of Webb county, was denied; his right being the same under the constitution as citizens of said state who are sued for land in the county where the land is situated, whereby the defendant was denied the equal protection of the laws in violation of Section 1st of the 14th amendment of the Constitution of the United States.

IV.

Defendant by his answer in the trial court claims that his title to the land in dispute was confirmed by the judgment of the district court of Webb county of March 13, 1872, by which as against the state of Texas, the title to said land was confirmed to Joaquin
130 Galan, his heirs and assigns under whom defendant claims said land.

The State of Texas never prosecuted any appeal from this judgment and it was recognized as a valid judgment by the commission of appeals in their judgment in Kennedy *vs.* Jarvis, (1 S. W. R., 194), which was affirmed by this court. In his said answer defendant claimed that the said judgment of the district court of Webb county was further ratified and, if invalid, validated by the act of the legislature of April 4, 1881.

The evidence shows that the defendant acquired the land after the rendition of said judgment of March 13, 1872, and after the passage of said act of April 4, 1881, relying upon said judgment and act as rules of property; and that at the time of the trial of this case, he had himself been in adverse and peaceable possession of said land for more than twenty years, having paid $8,000 for it and all taxes to the amount of $4500 without knowledge or notice of any claim of the state, by all of which defendant's right and title to said land became vested in him as against the state. But the judgment of this court holding that said judgment of March 13, 1872, is void and holding that said act of April 4, 1881, did not validate the same, divests defendant of his vested right and title and deprives him of his property without due process of law and takes his private property for public use without just compensation in violation of the 5th amendment of the constitution of the United States.

V.

Defendant in his answer in the trial court claimed title to the land in dispute under and by virtue of the judgment of the district court of Webb County of January 8, 1862. This judgment was introduced in evidence both by the state and the defendant upon the trial and was held to be a valid judgment by the trial court and this court; in
131 this judgment of January 8, 1862, Daniel Ruggles, through whom the defendant claimed, was the party plaintiff, and the State of Texas was the party defendant. It is recited in this

judgment that the land in dispute was granted by the government of Spain to Joaquin Galan sometime previous to 1804; that said Joaquin Galan sold said land to Manuel Garza who settled upon it and occupied it for many years; that about the year 1810 the government of Spain expropriated said land from said Manuel Garza for the purpose of establishing the town of Palafox and for the purpose of obtaining land for the use of the settlers of said town; that said town was settled and the said expropriated land lying above and below the same was "given and donated to the settlers in the shape of porciones."

In his chain of title set out in the record, defendant claimed under a deed executed March 17, 1855, conveying to Daniel Ruggles five porciones of this same expropriated land, according to the description in the deed, which five porciones would about equal in amount the land in dispute. The chain of title from that deed down to defendant is regular. He and those under whom he claims had been in possession of this land under a deed purporting to convey it for forty eight years at the time of the trial in the lower court. This judgment of January 8, 1862, recognized as valid by this court, in reciting that this porcion land was expropriated and granted to the settlers of the town, taken in connection with this ancient deed conveying porciones of land out of the very land expropriated, furnishes the highest and most conclusive evidence of the regularity and validity of defendant's title. But the defendant pleaded in the trial court that if the title was not in him then it was outstanding in the settlers in the town of Palafox or their heirs and assigns; and as evidence of said outstanding title, defendant relied upon the recital in said judgment of January 8, 1862, that the land expropriated lying above and below said town was given and donated to the
132 settlers in the form of porciones. We also relied upon the uniform decisions of this court that the proof of an outstanding legal title is a sufficient defense in the action of trespass to try title. The State of Texas in the trial of this cause relied upon this recital that the land in dispute was expropriated by the former sovereignty of the soil. In order to have any claim to the land it was necessary for the State to rely upon this recital, because the previous recitals in the judgment showed that the land had been granted to Joaquin Galan and thus severed from the public domain. The recital that the land was expropriate, upon which the state relied and the recital that after its expropriation it was given and donated to the settlers of the town, upon which the defendant relied, appear in the same sentence in the judgment.

Defendant relied upon the fact that if one part of a sentence of a judgment is evidence, then another part of the same sentence relating to the same subject matter would be evidence also.

Defendant respectfully submits that this Honorable Court in its judgment overruling the motion for a rehearing practically held that the recital that the land was expropriated was evidence for the state, but that the recital in the same sentence that after its expropriation it was given and donated to the settlers was not evidence for the defendant and could not be used to prove outstanding title, by

which ruling in a cause prosecuted under said act of the legislature of Texas of September 3, 1901, defendant was deprived of a long established rule of evidence and was denied the equal protection of the law contrary to section first of the fourteenth amendment of the constitution of the United States, the effect of which is to divest defendant of his vested right and title to said land and to deprive him of his property without due process of law, and to take his
133 private property for public use without just compensation in violation of the fifth amendment of the constitution of the United States.

H. G. DICKINSON,
Attorney for Thomas O'Conor, Defendant in Error.

Supreme Court of the State of Texas.

No. 1193.

THE STATE OF TEXAS, Plaintiff in Error,
vs.
THOMAS O'CONOR, Defendant in Error.

The said Thomas O'Conor, defendant in error, by his attorney having filed the above and foregoing petition for a writ of error in said cause and also an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered in said cause, and that the amount of bond on said writ of error be and hereby is fixed at $500.

R. R. GAINES,
Chief Justice, Supreme Court of Texas.

Endorsed: The Supreme Court of Texas. No. 1193. The State of Texas, Plaintiff in Error, *vs.* Thomas O'Conor, Defendant in Error. Petition for Writ of Error. Filed in Supreme Court of Texas March 25, 1905. F. T. Connerly, Clerk.

134 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment a plea which is in the said Supreme Court of the State of Texas before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Texas and Thomas O'Conor, the same being cause No. 1193 on the docket of said Supreme Court wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a

statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Thomas O'Conor, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 25th day of April 1905 next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

135 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, the 25th day of March, in the year of our Lord one thousand nine hundred and five.

D. H. HART,
Clerk of the Circuit Court of the United States for the Western District of Texas.

Allowed by
R. R. GAINES,
Chief Justice of the Supreme Court of the State of Texas.

Filed in Supreme Court of Texas March 25th, 1905.

F. T. CONNERLY, *Clerk.*

[The Seal of the U. S. Circuit Court, Western Dist. Texas.]

136 UNITED STATES OF AMERICA, *ss:*

The President of the United States to The State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date of this writ pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Western District of Texas, wherein Thomas O'Conor is plaintiff in error and the State of Texas is defendant in error to show cause if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 25th day of

March A. D. 1905 and of the independence of the United States the One hundred and twenty-ninth.

R. R. GAINES,
Chief Justice of the Supreme Court of the State of Texas.

Attest:

[The Seal of the U. S. Circuit Court,
Western Dist. Texas, Austin.]

D. H. HART,
Clerk of the Circuit Court of the United States
for the Western District of Texas, at Austin.

Filed in Supreme Court of Texas, March 25th, 1905.

F. T. CONNERLY, *Clerk.*

THE STATE OF TEXAS, *Travis County.*

We hereby on this 25th day of March, 1905, accept due and legal service of the above and foregoing citation and notice in the cause entitled Thomas O'Conor, plaintiff in error, *vs.* The State of Texas, defendant in error, on writ of error in the Supreme Court of the United States, and for the State of Texas hereby waive any further notice.

R. V. DAVIDSON,
Attorney General of the State of Texas.
S. W. T. LANHAM,
Governor of the State of Texas.

137 Know All Men By These Presents that we, Thomas O'Conor, as principal and Juan E. de La Garza and J. H. Murphy, as sureties are held and firmly bound unto the State of Texas in the full and just sum of Five Hundred Dollars to be paid to the State of Texas; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 23rd day of March A. D. 1905. And whereas lately at the City of Austin, State of Texas, in a suit pending in the Supreme Court of the State of Texas, between the State of Texas, as plaintiff in error, and the said Thomas O'Conor, as defendant in error, the same being No. 1193 on the docket of said court, a judgment was rendered against the said Thomas O'Conor, and the said Thomas O'Conor having prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment aforesaid, and a citation having issued directed to S. W. T. Lanham, Governor and R. V. Davidson, Attorney General, of said State citing them to appear at a Supreme Court of the United States, to be holden at the City of Washington, District of Columbia. Now, the condition of the above obligation is such that if the said Thomas O'Conor shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea

good, then the above obligation to be void: otherwise to remain in full force and effect.

THOS. O'CONOR.
JUAN E. DE LA GARZA.
J. H. MURPHY.

Sealed and delivered in presence of
P. LOZANO.

THE STATE OF TEXAS, *Webb County.*

Juan E. De la Garza and J. H. Murphy being duly sworn,
138 depose and say and each for himself saith that he is worth $500.00 over and above all just debts, liabilities and exemptions.

JUAN E. DE LA GARZA.
J. H. MURPHY.

Sworn to and subscribed before me this 23rd day of March, 1905
P. J. MacMAHON,
Not. Pub., Webb County, Texas.

[SEAL.]

262.

Approved:
R. R. GAINES,
Chief Justice of the Supreme Court of Texas.

Endorsed: Supreme Court of the United States. No. —. Thomas O'Conor, Plaintiff in Error, *vs.* The State of Texas, Defendant in Error. Filed in the Supreme Court of Texas, March 25th, 1905. F. T. Connerly, Clerk.

In the Supreme Court of the United States.

THOMAS O'CONOR, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.

Now comes Thomas O'Conor, plaintiff in error herein, by his attorney and says that in the record and proceedings in the Supreme Court of the State of Texas in the cause therein entitled, The State of Texas, Plaintiff in Error, *vs.* Thomas O'Conor, Defendant in Error, No. 1193, on the docket of that court, as well as in the judgment of said Supreme Court of Texas rendered in said cause on the 4th day of May, 1903, and also in the judgment of said court
139 overruling the motion for rehearing rendered therein on the 8th day of June, 1903, manifest error has happened to the damage of the said Thomas O'Conor, plaintiff in error herein; and he now files the following assignment of errors upon which he will

rely in his prosecution of the writ of error in the above entitled cause.

I.

The Supreme Court of Texas erred in holding and deciding in its judgment overruling the motion for a rehearing, that the application of plaintiff in error for the removal of said cause from the district court of Travis county to the United States Circuit Court was properly denied by the said district court, which was the trial court in this case.

II.

The said Supreme Court erred in not remanding said cause to the said trial court and directing that it be transferred and removed to the proper United States Circuit Court, as prayed for in the petition for removal duly filed in said trial court by plaintiff in error.

III.

The said Supreme Court erred in affirming the judgment of said trial court in overruling the plea of plaintiff in error to the jurisdiction of the said trial court.

IV.

The said Supreme Court erred in affirming the judgment of the said trial court holding that the district court of Travis county had jurisdiction to try this action of trespass to try title to the land in dispute which is situated in Webb couny, Texas, and not in said Travis county, Texas.

V.

The said Supreme Court erred in holding that the Act of
140 the Legislature of the State of Texas of April 4th, 1881, did not ratify, validate and confirm the judgment of the district court of Webb county of March 13th, 1872, rendered in the cause entitled Daniel Ruggles *vs.* The State of Texas, if for any cause it was irregular.

VI.

The said Supreme Court erred in holding that the judgment of the District Court of Webb county, Texas, rendered and given on March 13th, 1872, in the cause entitled Daniel Ruggles *vs.* The State of Texas is a void judgment.

VII.

The said Supreme Court erred in not holding that the State of Texas is estopped from claiming or setting up title to the land in dispute by the said judgment of the district court of Webb county of March 13th, 1872.

VIII.

The said Supreme Court erred in not holding that the State of Texas is estopped from claiming or setting up title to the land in dispute by the said act of the Legislature of April 4th, 1881.

IX.

The said Supreme Court erred in not holding that the said act of the Legislature of Texas of April 4th, 1881, is a legislative grant or release of all right, title and interest that the State of Texas ever had in and to the said land in dispute.

X.

The said Supreme Court erred in holding that the judgment of the district court of Webb county of January 8th, 1862, in the cause entitled Daniel Ruggles *vs.* The State of Texas estopped plaintiff in error from claiming title to the land in dispute.

141

XI.

The said Supreme Court erred in holding that said judgment of the district court of Webb county of January 8th, 1862, did not estop the State of Texas from claiming and setting up title to the land in dispute.

XII.

The said Supreme Court erred in holding that the said judgment of the district court of Webb county of January 8th, 1862, did not show an outstanding title to the land in dispute in the settlers of the town of Palafox or their heirs and assigns.

XIII.

The said Supreme Court erred in holding that the recital in the said judgment of the district court of Webb county of January 8th, 1862, to the effect that the land in dispute was expropriated and thereafter granted to the settlers of the town of Palafox, was the recital of an immaterial fact, which could not show outstanding title and by which the State of Texas is not bound or estopped.

XIV.

The said Supreme Court erred in not holding that the adverse possession of said land under a claim of right by defendant and those under whom he claims for so great a period of time under the Spanish government, the Mexican government and the State of Texas, raised a presumption of a grant from the State of Texas, by which the State is estopped from now claiming said land.

XV.

The said Supreme Court erred in not rendering judgment for plaintiff in error upon the evidence in the record that the plaintiff in error held the legal title to the land in dispute by a regular chain of title from the sovereignty of the soil.

142 XVI.

The said Supreme Court erred in not rendering judgment f
plaintiff in error because plaintiff in error claimed in his answer th
he had acquired the title of the settlers of the town of Palatox to t
land in dispute and the undisputed evidence showed that he held t
title to five of the porciones of land that had been granted to sa
settlers according to the said recital of the said judgment of Janua
8th, 1862.

And the said Thomas O'Conor prays that the judgment of t
said Supreme Court of Texas be reversed, annulled and held for not
ing, and that he may be restored to all things which he has lost
occasion of the said judgment, etc.

H. G. DICKINSON,
Attorney for Thomas O'Conor, Plaintiff in Error.

Endorsed: In the Supreme Court of the United States. No.
Thomas O'Conor, Plaintiff in Error *vs.* The State of Texas, Defen
ant in Error. Assignment of Errors. Filed in the Supreme Cou
of Texas, March 25th, 1905. F. T. Connerly, Clerk.

143 CLERK'S OFFICE, SUPREME COURT.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, here
certify that the foregoing One Hundred and Forty-two pages, exc
pages numbered 134, 135 and 136, contain a true and correct copy
a transcript of the record of all the proceedings had in the Dist
court of Travis county; in the Court of Civil Appeals for the Thi
Supreme Judicial District of Texas, at Austin, and in the Supre
Court of Texas, in cause No. 1193 on the docket of said Supre
Court of Texas, entitled The State of Texas, Plaintiff in Error—
—Thomas O'Conor, Defendant in Error, as the same appear
record and on file in this office. I further certify that the pa
herein numbered 134 and 135 *is* the original writ of error, of wh
a copy has been lodged and is now on file in this office, and tha
page numbered 136 is the original citation in error, of which a co
is now on file in this office.

In Testimony Whereof, I have hereunto affixed my signature, w
the seal of the Supreme Court of Texas, at the city of Austin, this
12th day of April A. D. 1905.

[Seal Supreme Court of the State of Texas.]

F. T. CONNERLY, *Clerk*

144 Transcript from the Supreme Court of the State of Tex
Thomas O'Conor, Plaintiff in Error, *versus* State of Tex
Defendant in Error.

Endorsed on cover: File No. 19,721. Texas Supreme Cou
Term No. 236. Thomas O'Conor, Plaintiff in Error, *vs.* The St
of Texas. Filed April 20th, 1905. File No. 19,721.